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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. ~~350~~. 114.

THE BOARD OF LIQUIDATION OF THE CITY DEBT, PLAINTIFF IN ERROR,

vs.

THE STATE OF LOUISIANA ON THE RELATION OF MISS LUCRETIA B. WILDER ET AL.

FILED AUGUST 8, 1899.

No. ~~374~~. 119.

THE DRAINAGE COMMISSION OF NEW ORLEANS, PLAINTIFF IN ERROR,

vs.

MISS LUCRETIA B. WILDER ET AL.

FILED AUGUST 17, 1899.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

(17,483 & 17,491).

(17,483 & 17,491).

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 369.

THE BOARD OF LIQUIDATION OF THE CITY DEBT, PLAINTIFF IN ERROR,

vs.

THE STATE OF LOUISIANA ON THE RELATION OF MISS LUCRETIA B. WILDER ET AL.

FILED AUGUST 8, 1899.

No. 377.

THE DRAINAGE COMMISSION OF NEW ORLEANS, PLAINTIFF IN ERROR,

vs.

MISS LUCRETIA B. WILDER ET AL.

FILED AUGUST 17, 1899.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 1, 1900.

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a UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

BOARD OF LIQUIDATION OF THE CITY DEBT and THE DRAINAGE Commission of New Orleans, Plaintiffs in Error,
versus
STATE *ex Rel.* MISS L. B. WILDER ET ALS., Defendants in Error.

Branch K. Miller, Esq., for Board of Liquidation of the City Debt.

Howe, Spencer and Cocke, for the Drainage Commission of New Orleans.

Charles J. Theard, Arthur McGuirk, and Henry L. Lazarus, for Miss L. B. Wilder and others.

Writ of error to the supreme court of the State of Louisiana from the Supreme Court of the United States of America, returnable at the city of Washington, D. C., within thirty (30) days from the tenth (10th) day of July, A. D. 1897.

Transcript of Record.

1 Appeals of the Board of Liquidation of the City Debt and the Drainage Commission of New Orleans from judgment in the city district court for the parish of Orleans, rendered on the 16th day of December and signed on the 22nd day of December, 1898. See judgment on folio —.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Civil District Court for the Parish of Orleans.

STATE *ex Rel.* MISS L. B. WILDER ET ALS.
vs.
BOARD OF LIQUIDATION OF THE CITY DEBT. } No. 57806. Civil District Court, Division "D."

Honorable N. H. Rightor, judge.

Petition of the State of Louisiana on the relation of Miss L. B. Wilder *et als.*, praying for a writ of mandamus, affidavit, and order of court and service accepted thereon.

Filed November 9th, 1898.

2 To the honorable the civil district court for the parish of Orleans:

The petition of the State of Louisiana upon the relation of Miss Lucretia B. Wilder, Mrs. Anna B. Cook, J. E. Seaman, J. V. Calhoun, J. H. Buckley, T. W. Dyer, Mrs. Mary Stamps, Miss H. A. Suter, Miss H. W. Seymour (now Mrs. Gresham), Miss Susan B. Elder, Miss Armentine Vienne, Miss M. Casach, Miss B. Woods, Mr.

A. S. Leche, Miss J. E. Linsler, Miss M. E. Pursell, Miss I. D. Pickens, Miss Kate Slack, Miss M. A. Curran, Mr. W. S. McElroy, Miss Carrie Forrer, Mrs. A. L. Howard, Miss M. G. Oliver, Miss Fannie A. Stringer, Miss Ida Whitaker, Miss Fannie S. Harby, Miss Louise Bertel, Mr. Vincent Mielly, Miss M. A. Nugent, Miss K. E. Eastman, Miss S. Bloomfield, Miss O. Woodworth, Mrs. Esther Dobie, Mrs. E. C. Hunter, Miss E. C. Dowty, Mr. D. A. Blanchard, Mrs. C. A. Curtis, Miss M. E. M'Loughlin, Miss H. L. Mylotte, Miss M. A. Broderick, Miss M. G. Fischer, Miss B. Furneaux, Miss Ada Jenks, Miss M. H. O'Connor, Miss A. M. Dart, H. B. Folk, Miss Isabella Simmons, Miss Charlotte Stuart, Miss Nellie H. Watson, Miss Sallie Harris, Miss G. I. Lambourne, Miss Jennie Reese, Miss M. L. Martin, Miss J. C. Dodge, Miss Isabel Levy, Mrs. M. E. McDonald, Mrs. J. C. Robinson, Miss Eliza Todd, Mrs. M. E. Taliafero, Miss Ida Patton, Miss M. A. Ames, Miss F. L. Flemich, Miss Clemence Charles, Miss Olivia Pitard, Miss M. A. Larkin, Mrs. R. Sulakoski, Miss M. Nevin, Mr. J. H. Heslin, Mrs. Annie Macken, Miss I. B. Grant, Miss E. L. Venables, Miss K. M. Hamblett, Miss Maria Mulvey,
Miss A. J. Hamilton, Miss A. Conwell, Miss Annie Sinclair,
3 Miss A. S. Miller, Miss Julia Donovan, Miss H. M. Hewitt,
Miss T. A. Sisa, Miss Emma B. Lloyd, Mrs. C. B. Sproule, Miss A. Paddon, Miss R. M. Woodley, Mrs. K. C. M'Cann, Miss M. McCoard, Miss Cecilia Coll, Miss Carrie Labatt, Miss Julia Mulvey, Miss Lizzie Barry, Miss Julia Buckley, Miss B. E. Sullivan, Miss Ida Bennett, Miss Mary Walsh, Miss Anna Stokes, Miss Thersa Hartnett, Miss Laura J. Murphy, Mr. A. P. Williams, Miss R. E. Campanel, Miss Amelia Berhel, Miss B. Plicque, Miss Alice Jones, Mrs. C. H. Thezan, Mrs. Sarah B. Allen, Mrs. S. F. Williams, Mrs. C. M. Keppard, Mrs. E. P. M'Carthy, Miss C. C. Kennedy, Miss L. M. White, Mrs. Rosa T. Edmunds, Miss E. B. Egleston, Miss R. M. Chevaillie, Mrs. K. J. Ricker, Mrs. A. E. Jones, Miss Addie M'Cord, Mrs. O. B. Cassonova, Mrs. H. M. Braguiens, Miss Emma Torrey, Miss Georgie Kerns, Miss L. Neelis, Miss M. J. O'Neil, Miss Julia Conroy, Mrs. J. E. Stehle, Miss M. Sassinot, Mrs. E. M. Keplinger, Miss K. Divine, Miss Adele Coudrain, Miss M. H. Hill, Miss O. K. Chellet, Miss R. King, Mr. Henry Reggio, Miss C. E. Carrolan, Miss S. A. Grant, Miss Josephine Stewart, Mrs. M. L. Hampson, Miss Josephine Hille, Miss H. A. Pittman, Miss Rosa Carolon, Mrs. Palmyre Cartier, Miss Aline Ribet, Miss Alice Sherlock, Miss M. E. Lyons, Miss Gretta Donovan, Miss Annie Kerwin, Miss Mary Pearson, Miss M. A. Armstrong, Miss J. M. Mettaxa, Miss M. V. Serran, Miss A. E. King, Miss Emma Lecroix, Miss Alice Sheean, Miss Frances O'Connor, Mr. Warren Easton, Miss G. M'Cerran, Miss M. J. Paul, Mrs. Mary Moore, Miss S. V. Redwood, Miss A. M. Hero, Miss C. Nicol, Miss E. V. Relf, Miss Louise Faust, Miss Sallie Boyce, Miss F. L. Smith, Miss V. Russell, Miss Ellen Moran, Miss C. Lichenstein, Miss A. A. Finch, Miss E. J. Young, Mrs. D. K. Miller, Miss Helen M'Carthy, Miss Mary M'Cann, Miss M. A. Ferguson, Miss Marie L. Points, Miss Lizzie Donovan, Miss Julia
Hedges, Mrs. M. F. Gerrard, Miss K. Howley, Dr. Jas. Burns,
4 Miss Antonis Hart, Miss Ella M. Brown, Miss Jane M'Anulty,
Miss Marie Peres, Miss Honora Brown, Miss A. F. Duval,

Miss Mary L. Barrett, Mr. W. J. Gahan, Mrs. V. Ducatel, Miss Emily Wagner, Miss Kate Toole, Miss Leonie Chevallo, Miss Ellen Carey, Miss Emma Ducoing, Miss A. M. Woods, Mr. Gustave Andry, Mrs. M. A. Doriocourt, Miss Ellen Quayle, Miss Rebecca Smith, Miss M. Bayhi, Miss Laura C. Harris, Mr. C. A. Barnes, Mrs. A. E. Van Camp, Mrs. Paul Ducatel, Miss Louise Van Dycke, Miss Eugenie Desdunes, Miss C. Hubbard, Mrs. Anna Bell, Miss M. O. Carter, Miss Rosa T. Moore, Miss Julia White, Miss Edith Harrison, Miss Susan Smith, Miss F. F. Huberwald, Mrs. H. Chaery, Miss Louise Lynch, Miss Lizzie Kennedy, Miss Mary Murphy, Mrs. Sylvia Easton, Mr. E. H. Trepagnier, Mrs. M. F. Stevens, Miss H. M. M'Carthy, Miss M. Marshall, Miss M. A. Stewart, Miss Lorenza Bertus, Miss Mary Gordon, Miss M. E. Anderson, Miss K. Delesdernier, Miss Alice Clark, Miss Ellen Kennedy, Miss Rita C. Monrose, Miss Kate Quaid, Miss E. B. Thomas, Mr. Ulric Bettison, Miss I. Warner, Mr. T. J. O'Sullivan, Miss Ellen Gow, Miss M. S. Wilson, Mrs. A. L. Salvio, Miss M. E. Cuggy, Miss Lucy Tallon, Miss Delphine Points, Miss Annie Scott, Miss K. J. Hughes, Miss Annie Sheean, Miss Emma Prados, Miss Sophie Blancq, Miss Julia Chevillon, Miss Mary B. Clark, Mrs. Parmela Cuculla, Miss Rosa Dione, Miss Esther Brando, Mr. A. B. Chandler, Miss Bridget Nolan, Miss J. A. Mayberry, Miss C. L. Stewart, Miss K. L. Magnon, Miss Kate E. Murphy, Miss Rebecca Fortune, Miss Marcella Curley, Miss M. O. Reynolds, Miss Mary M'Elligot, Miss A. E. O'Brien, Miss Mary Moore, Miss N. D. Cooper, Miss Jane Donnelly, Miss J. Fitzgerald, Miss Mary L. Stokes, Mrs. H. Kilshaw, Miss J. F. Cripps, Miss M. A. Murphy, Miss E. J. O'Hara, Miss S. Llambias, Mrs. C. Collerton, Miss M. A. Riley, Miss H. L. Garrett, Mrs. A. W. Brown, Miss J. J. Ingraham, Miss M. E. Golden, Miss Amelia Kelsey, Mrs. L. Ward, Mr. M. M. Lowe, Miss M. E. Tank, Miss Ellen Clapp, Miss Maud O'Brien, Miss L. E. Lambourne, Mrs. H. M. Wells, Miss K. L. Glenn, Miss N. S. O'Connor, Miss Helena Phillips, Mrs. M. E. Mallam, Miss M. Creswell, Miss Bettie Murphy, Miss M. Emanuel, Miss M. A. Mulligan, Miss Agnes Boyce, Mrs. W. J. Kleinpeter, Miss Agatha Meehan, Miss Emma J. Taylor, Miss L. C. King, Mr. Louis Leche, Miss N. P. Hero, Miss Nettie Parr, Miss I. Fredericks, Miss B. A. Houghton, Miss Mary J. Dowty, Miss Margeret Horen, Mis- May Lemkin, Mrs. B. L. Beck, Miss Jessie Wilbur, Miss M. A. Wickes, Miss M. Bridgins, Miss I. E. O'Brien, Miss Eliza Wheaton, Miss H. M. Jourdan, Miss Ruth H. Walsh, Miss K. C. Connelly, Miss Georgie Hodgins, Miss E. Wilbur, Miss S. S. M'Enery, Miss P. E. Packard, Miss L. E. Sterling, Miss M. E. Sommerville, Mrs. L. M. Williams, Miss Blanche Cenas, Mrs. Josephine Reed, Mrs. C. D. Cooke, Mrs. Cora P. Beecher, Miss Etna Portner, Miss Sidonia Holmes, Mr. J. R. Hutchinson, Miss M. E. Finnerty, Miss E. B. Brown, Miss Irene Rondeau, Miss Minnie Weaver, Miss C. A. Forbes, Miss M. A. Reynolds, Miss Nellie Pickett, Miss M. A. Flanagan, Mrs. C. Reese, Miss L. C. Whitaker, Miss M. J. Dornon, Miss M. J. Kearney, Miss A. L. Beecher, Mrs. W. M. Carroll, Miss M. G. M'Lerenan, Miss D. L. Bostick, Miss Elese Hunter, Miss E. Allen, Miss A. E. M'Lirenan, Mrs. Ellen Hamilton, Miss C. A. Warner, Miss J. E. Morton, Mrs. M. E.

Westerfield, Mrs. M. A. Martinez, Miss Mary Clarkson, Miss Ida Halberg, Miss E. Verlander, Mr. C. P. Guichard, Mrs. P. H. Saffold, Miss E. E. Vigers, Miss Amelia Chiappela, Miss Mary E. Penn, Miss Jennie G. Simms, Miss J. C. Berhel, Mr. J. J. O'Connor, Miss L. S. Howard, Mrs. M. E. Fortier, Miss Mathilda Ohlsen, Miss Ada V. Rosseau, Mr. S. C. Clark, Mrs. L. B. Anderson, Mrs. A. E. Chase, Miss M. A. Gardiner, Miss Maggie Redlich, Miss N. E. Nicholls, Miss E. C.
6 Wheelahan, Mrs. M. E. Holmes, Miss E. F. Hayden, Mrs. M. J. Williams, Miss J. E. Mooney, Miss M. J. Turner, Miss Maggie Crawford, Miss H. E. Lawrence, Miss A. E. Kilgrove, Miss F. S. Dalacy, Miss E. L. Rodriguez, Miss Annie Leddy, Miss M. A. Sullivan, Miss Sallie Payne, Miss Lizzie Keeling, Miss Susan Schriever, Miss Julia Clapp, Mr. T. L. Preston, Miss H. O. White, Miss L. E. Prest, Miss Fannie I. Dart, Miss E. Gardenghi, Miss Anna Dyer, Miss Emma T. Rosner, Miss Isabel Ferguson, Miss May Brooks, Miss Sarah H. Evans, Miss May E. Blood, Miss May Clack, Miss M. H. Hallaran, Miss Eliza Clark, Miss C. A. Beck, Mrs. R. Railpon, Miss Kate Kelly, Miss C. G. M'Manus, Miss Annie Thiel, Miss A. L. Pascoe, Miss C. W. Bentley, Miss Florence Gordon, Miss Mary H. Tallieu, Mrs. G. A. Anderson, Miss Isabel Ryan, Mrs. F. V. Hooper, Miss Nanon J. Kelley, Miss Mathilda Reuter, Miss N. B. Harthorne, Mrs. J. R. Dicks, Miss Lizzie Kelley, Miss Emily Olschner, Miss May A. Leddy, Miss R. T. Murphy, Miss Emma Quick, Anita Ball, G. Black, Mathilda Bernard, M. Bull, J. Brown, O. Brennan, A. Cornwell, R. Carolan, R. C. Chamberlain, M. M. Campanel, E. M. Clark, B. Carroll, A. J. Dougherty, N. Donovan, Alica Dickson, Mary Daly, Selina Duvic, Emily Dart, M. De Boer, D. Daignan, H. Diamond, E. B. Eagleson, Alica Ellis, Georgie Fountain, A. A Finch, M. Flanagan, J. Gallagher, Kate Hughes, L. Hentich, Kate Howley, B. Hynes, M. Halloran, Irene Hester, Louise Hornbeck, Ida Halberg, E. Hamilton, A. Harper, C. M. Holland, N. Houlgrave, M. Harrison, M. G. Holmes, B. Harthorne, Daisy Jackson, N. James, I. E. Joyce, L. Kilshaw, A. C. Kearney, Mary Kennedy, A. Kennedy, M. D. Kennedy, J. Lahargue, M. A. Michel, L. Mulvey, A. Michel, B. Mayhen, B. Maher, M. D. Moore, M. Michel, Lizzie Neelis, N. E. Nicholls, M. Orrantia, Agatha Pretus, F. Powers, R. M. Pascoe, L. A. Patton, G. Peyton, A. Payne, M. Ryan, S. J. Stephens, S. A. Steele,
7 M. Smith, L. Smith, C. M. Spellicy, J. Simon, M. Spellicy, S. Smith, N. Shelly, A. Stickney, C. Stringer, D. Sheehan, Kate Sullivan, Martha Spence, Rosalie Shoeffer, E. J. Taylor, Alice Young, B. Allen, C. Amman, E. Bernard, E. O. Boyle, M. Barrow, B. Booth, Sarah Brooks, B. Blanc, J. Burke, C. Byrne, D. Burt, D. Cosgrove, M. Collins, E. Cure, E. Cronnan, M. Caldwell, L. Chevoileau, E. Chineau, M. Caruthers, M. T. Cochran, M. Carroll, M. Connelly, M. Collier, M. Duignan, H. Daly, M. Donnelly, C. Denny, B. Doyle, E. Ducts, J. Foster, A. Gould, R. Hevyart, M. Hausman, B. Heavy, J. Jacquet, C. Killelae, J. Kinney, G. H. Kelly, M. Kelly, Mary Kelly, M. Lane, M. Lardner, C. Moffat, E. M'Cabe, M. M'Cormack, E. M'Ginnis, B. M'Keone, E. Nides, M. Morton, H. O'Connor, M. A. Pickett, E. Rhobacher, M. Riley, N. J. Rayna, John Ryan, M. Ryan,

M. Schriever, M. J. Stansbury, M. Shea, M. White, J. C. Watkins, A. Wilcox, A. Waters, with respect shows:

That, in accordance with the provisions of articles 315 and 316 of the constitution of the State of Louisiana of 1898, the city of New Orleans has examined into and assumed payment of the claims of the school teachers and portresses of the public schools of this city for unpaid salaries for the years 1882, 1883, and 1884, and the city comptroller, by direction of the city council, has issued to relators, as the original owners of said claims, certificates of indebtedness, countersigned by the mayor, setting forth the amount due by the city to each claimant, and representing the total sum of one hundred and fifteen thousand five hundred and fifty-eight $\frac{33}{100}$ dollars ($115,558.33), as will more fully appear from the said certificates, which will be produced on the trial of this cause, and from the ordinances adopted by the city council, Nos. 14477, 14591, and 14675, C. S., copies of which will be filed hereafter.

8 That a list of all the claimants and of the amount due each claimant is made part of ordinance No. 14591, and a duplicate of said list is annexed to and made part of this petition.

That articles 316 and 317 of the constitution of this State provide that the certificates of indebtedness aforesaid shall be paid by the Board of Liquidation of the City Debt, and that the requisite funds shall be provided by said board by the sale of sufficient number of the constitutional bonds of the city of New Orleans of the issue provided for by act 110 of the General Assembly for the year 1890 and by the amendment to the constitution of the State, submitted to the people by said act and adopted at the general election in 1892.

That due demand had been made of said board of liquidation, but that it refuses to obey the mandate of the constitution.

That the said Board of Liquidation of the City Debt is a corporation created by act 133 of the General Assembly for the year 1880; that its domicile is in this city, and R. M. Walmsley, Esq., is its president.

That the refusal of said board of liquidation to obey the mandate of the constitution is both a disregard of duty and a denial of justice, leaving the complainants without relief by ordinary proceedings, and that a writ of mandamus should therefore issue herein.

Relators further represent that the litigation necessitated by the action of said board will subject the claimants to expense and long delay, which should have been avoided, and that legal interest should be allowed on each certificate of indebtedness from the date of the filing of these proceedings.

Wherefore relators *pary* that an alternative writ of mandamus issue herein, addressed to the Board of Liquidation of the

9 City Debt, through R. M. Walmsley, its president, commanding the said board of liquidation to pay the certificates of indebtedness aforesaid, amounting to the total sum of one hundred and fifteen thousand five hundred and fifty-eight $\frac{33}{100}$ dollars ($115,558.33), together with interest on each of said certificates, at

the rate of five per cent. per annum, from this date until paid, and to provide the requisite funds by the sale of a sufficient number of the constitutional bonds of the city of New Orleans of the issue provided for in act 110 of the General Assembly for the year 1890 and by the amendment to the constitution of the State, submitted to the people, of the said act, and adopted at the general election in 1892, or to show cause to the contrary, on a day to be fixed by this honorable court, and that after due hearing said writ of mandamus be made peremptory.

And relators pray for costs and for general relief, etc.

(Signed) CHAS. J. THEARD,
ARTHUR McGUIRK, *Att'ys.*

Affidavit.

Miss Lucretia B. Wilder and Mrs. Anna B. Cook, two of the relators, being duly sworn, depose and say that all of the allegations of the above petition are true and correct.

(Signed) ANNA B. COOK.
L. B. WILDER.

Sworn to and subscribed before me, at New Orleans, this 9th day of November, 1898.

[SEAL.] (Signed) CHAS. J. THEARD, *Not. Pub.*

Service accepted.

(Signed) BOARD OF LIQUIDATION CITY DEBT,
CITY OF NEW ORLEANS, LA.,
By R. M. WALMSLEY, *Pres't.*

N. O., Nov. 9, '98.

Order.

Let an alternative writ of mandamus issue as herein prayed,
10 returnable to this court on Thursday, the 17th day of November, 1898, at eleven o'clock a. m.

(Signed) N. H. RIGHTOR, *Judge.*

N. O., November 9, 1898.

List (Duplicate) of the Claimants and of the Amount Due Each Claimant, Annexed to and Made Part of Petition.

Filed November 9th, 1898.

Civil District Court, Division "D."

STATE *ex Rel.* MISS L. B. WILDER & Others
vs.
THE BOARD OF LIQUIDATION OF THE CITY DEBT. } No. 57806.

No. 1. ACADEMIC No. 1.

	1882.	1883.	1884.	
J. E. Seaman	147.75	405.00	270.00	822.75
J. V. Calhoun	131.68	363.00	223.85	718.53
J. H. Buckley	105.08	288.00	192.00	585.08
T. W. Dyer	104.79	288.00	.....	392.79

No. 2. ACADEMIC No. 2.

Mrs. Mary Stamps	136.80	375.00	239.15	750.95
Miss H. A. Suter	108.80	300.00	189.00	598.13
" H. W. Seymour (now Mrs. Gresham)	81.58	225.00	.....	305.90
Miss Susan B. Elder	81.88	225.00	.....	306.88

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	1882.	1883.	1884.	
Miss Armentine Vienne	82.10	225.00	133.20	439.45
" M. Cusach	59.07	162.00	150.00	371.07
" B. Woods	49.10	135.00	150.00	332.10

No. 3. JACKSON—BOYS.

Mr. A. S. Leche	93.05	.....	.....	93.05
Miss J. E. Linsler	59.07	162.00	108.00	329.07
" M. E. Pursell	54.75	.....	.....	54.75
" I. D. Pickens	48.96	150.00	90.00	288.96
" Kate Slack	38.30	135.00	90.00	258.30
" M. A. Curran	34.80	105.00	70.00	209.80
Mr. W. S. M'Elroy	.....	255.00	200.00	455.00
Miss Carrie Forrer	38.21	105.00	70.00	213.21

No. 4. JACKSON—GIRLS.

Mrs. A. L. Howard	78.71	216.00	144.00	438.81
Miss M. G. Oliver	59.07	162.00	108.00	329.07
" Fannie A. Stringer	47.43	150.00	90.00	287.43
" Ida Whitaker	47.50	135.00	90.00	272.50
" Fannie S. Harby	38.30	105.00	70.00	213.30
" Louise Bertel	38.30	105.00	70.00	213.30

No. 5. PAULDING.

Mr. Vincent Mielly	93.05	255.00	200.00	548.05
Miss M. A. Nugent	58.96	162.00	134.00	354.96
" K. E. Eastman	59.07	162.00	105.65	326.72
" S. Bloomfield	48.43	135.00	90.00	273.43
" O. Woodworth	49.25	135.00	87.75	272.00
Mrs. Esther Dobie	38.21	105.00	63.00	206.21
" E. C. Hunter	38.21	105.00	68.25	201.46
Miss E. C. Dowty	38.21	105.00	70.00	213.21

12 No. 6. JEFFERSON.

Mr. D. A. Blanchard	93.05	255.00	.....	348.05
Mrs. C. A. Curtis	59.04	162.00	108.88	329.04
Miss M. E. McLoughlin	58.36	162.00	105.65	326.01
" H. L. Mylotte	49.25	135.00	90.00	274.25
" M. A. Broderick	38.30	105.00	.....	143.30
" M. G. Fisher	48.30	135.00	90.00	273.30
" B. Furneaux	32.74	.....	.....	32.74
" Ada Jenks	36.71	105.00	70.00	211.71
" M. H. O'Connor	38.30	105.00	68.25	211.55
" A. M. Dart	38.30	105.00	64.75	208.05
H. B. Folk	.....	.....	121.70	121.70

No. 7. WEBSTER.

Miss Isabel Simmons	78.81	216.00	144.00	438.81
" Charlotte Stuart	59.07	162.00	108.00	329.10
" Nellie H. Watson	59.07	162.00	108.00	329.10
" Sallie Harris	49.25	135.00	88.05	272.30
" G. I. Lambourne	48.96	135.00	88.05	272.01
" Jennie Reese	38.30	105.00	70.00	213.30
" M. L. Martin	37.06	105.00	68.50	210.56
" J. C. Dodge	38.30	105.00	61.25	204.55
" Isabel Levy	38.30	105.00	70.00	213.30

13 No. 8. FRANKLIN.

Mrs. M. E. M'Donald	78.81	216.00	144.00	438.81
" J. C. Robinson	52.03	.....	.....	52.03
Miss Eliza Todd	59.07	162.00	91.80	312.87
Mrs. M. E. Taliafero	59.07	162.00	108.00	329.07
Miss Ida Patton	49.25	135.00	90.00	274.25
" M. A. Ames	49.25	135.00	87.75	272.00
" F. L. Flemich	49.25	135.00	87.75	272.00
" Clemence Charles	49.25	135.00	90.00	274.25
" Olivia Pitard	38.30	105.00	65.45	208.75
" M. A. Larkin	38.30	105.00	70.00	213.30
Mrs. R. Sulakoski	38.30	105.00	70.00	213.30
" M. Nevin	38.30	105.00	70.00	213.30
Forward	3,727.22	9,939.00	6,064.80	
14 Amount brought forward	3,727.22	9,939.00	6,064.80	

No. 9. GARFIELD.

Mr. J. H. Heslin	93.05	255.00	200.00	548.05
Mrs. Annie Macken	59.07	162.00	108.00	329.07
Miss I. B. Grant	59.07	162.00	108.00	329.07
" E. L. Venables	48.96	135.00	84.75	268.71
" K. M. Hamblett	49.25	135.00	90.00	274.25
" Marie Mulvey	49.25	135.00	88.05	272.30
" A. J. Hamilton	49.25	135.00	88.05	272.30
" A. Conwell	38.21	105.00	70.00	213.21
" Annie Sinclair	38.21	105.00	68.50	211.71
" A. S. Miller	38.07	105.00	35.00	178.07
" Julia Donovan	36.62	105.00	70.00	211.62
" M. M. Hewitt	38.30	105.00	70.00	213.30
" T. A. Sisa	38.30	105.00	70.00	213.30
" Emma B. Lloyd	38.30	105.00	70.00	213.30

No. 10. M'DONOGH, No. 11.

Mrs. C. B. Sproule	77.47	255.00	.....	332.47
Miss A. Paddon	59.07	162.00	108.00	329.07
" R. M. Woodley	59.07	162.00	108.00	329.07
Mrs. K. C. M'Cann	59.07	162.00	93.55	314.62

Miss M. M'Cord	49.25	135.00	85.50	269.75
" Cecilia Coll	47.60	135.00	.....	182.60
" Carrie Labatt	48.96	135.00	75.15	259.11
" Julia Mulvey	49.25	135.00	90.00	274.25
" Lizzie Barry	38.30	105.00	70.00	213.30
Miss Julia A. Buckley	35.95	105.00	66.75	207.70
15 Miss B. E. Sullivan	38.30	105.00	68.50	211.80
" Ida Bennett	31.30	105.00	.....	136.30
Miss Mary Walsh	37.15	105.00	68.50	211.65
" Anna Stokes	37.15	105.00	68.50	211.65
Miss Theresa Hartnett	38.14	105.00	70.00	213.14
" Laura J. Murphy	37.99	105.00	66.50	209.49

No. 11. FISK—BOYS.

Mr. A. P. Williams	87.55	240.00	160.00	487.55
Miss R. E. Campanel	58.96	162.00	105.30	326.26
" Amelia Berhel	49.25	135.00	90.00	274.25
" B. Plicque	49.25	135.00	.....	184.25
" Alice Jones	38.21	105.00	88.05	231.26
Mrs. C. H. Thezan	35.86	105.00	.....	140.86
" Sarah B. Allen	38.30	105.00	64.75	208.05

No. 12. FISK—GIRLS.

Mrs. S. F. Williams	72.23	198.00	132.00	402.23
" C. M. Keppard	58.96	162.00	108.00	328.96
" E. P. M'Carthy	48.96	135.00	90.00	273.96
Miss C. C. Kennedy	49.10	135.00	90.00	274.10
" L. M. White	38.30	105.00	68.25	311.55
Mrs. Rosa T. Edmunds	38.21	105.00	65.00	208.21
Miss E. B. Egleston	.....	105.00	68.25	173.25

16 No. 13. BIENVILLE.

Miss E. M. Chevaillie	92.76	255.00	170.00	517.76
Mrs. K. J. Ricker	58.96	162.00	108.00	328.96
" A. E. Jones	49.25	135 00	87.75	272.00
Miss Addie M'Cord	48.96	135.00	81.00	264.96
Mrs. O. B. Cassanova	49.25	135.00	90.00	274.25
" H. M. Bruguiens	38.07	105.00	66.75	209.82
Miss Emma Torrey	38.30	105.00	70.00	213.30
" Georgie Kerns	38.30	105.00	70.00	213.30
" L. Neelis	.....	.....	49.75	49.75

No. 14. METAIRIE RIDGE.

Miss M. J. O'Neil	59.07	162.00	108.00	329.07
" Julia Conroy	37.77	105.00	70.00	212.77

No. 15. ROBERTSON.

Mrs. J. E. Stehle	78.49	216.00	136.80	431.29
Miss M. Sassinot	58.76	162.00	.....	220.76
Mrs. E. M. Keplinger	49.25	135.00	90.00	274.25
Miss K. Divine	48.96	135.00	90.00	273.96
" Adele Coudrain	38.30	105.00	65.15	208.45
" M. H. Hill	38.30	105.00	70.00	213.30
" O. K. Chellet	38.21	105.00	.....	143.21
" R. King	.....	.....	70.00	70.00

17 No. 16. BAYOU ROAD.

Mr. Henry Reggio	87.55	216.00	160.00	487.55
Miss C. E. Carolan	59.07	162.00	102.60	323.67
" S. A. Grant	49.25	135.00	70.35	254.60
" Josephine Stewart	4.25	.....	.....	4.25
Mrs. M. L. Hampson	38.30	135.00	81.00	254.30
Miss Josephine Hille	38.30	105.00	70.00	213.30
" H. A. Pittman	38.30	105.00	70.00	213.30
" Rosa Carolan	.....	105.00	68.25	173.25

No. 17.	CLAIBORNE.			
Mrs. Palmyre Cartier	71.84	198.00	128.70	398.54
Miss Aline Ribet	5.07	.....	.....	5.07
" Alice Sherlock	49.25	135.00	87.50	271.75
" M. E. Lyons	49.25	135.00	90.00	274.25
" Gretta Donovan	38.30	105.00	68.25	211.55
" Annie Kerwin	38.30	105.00	....	143.30
" Mary Pearson	38.21	105.00	61.25	204.46
" M. A. Armstrong	72.23	198.00	.....	270.23
Forward	7,245.89	20,157.00	12,021.70	
18 Amount brought forward	7,245.89	20,157.00	12,021.70	
No. 18.	ST. ANN.			
Miss J. M. Mettaxa	72.23	198.00	125.40	395.63
" M. V. Sarran	59.07	162.00	100.80	321.87
" A. E. King	49.25	135.00	86.10	270.35
" Emma Lacroix	49.25	135.00	88.05	272.30
" Alice Sheean	38.21	105.00	65.00	208.21
" Frances O'Connor	38.30	105.00	63.00	206.30
No. 19.	ST. PHILIP.			
Mr. Warren Easton	93.05	255.00	.....	348.05
Miss G. M'Carran	58.96	162.00	97.90	318.86
" M. J. Paul	59.07	162.00	108.00	329.07
Mrs. Mary Moore	58.85	162.00	108.00	328.85
Miss S. B. Redwood	49.25	135.00	90.00	274.25
" A. M. Hero	49.25	135.00	86.10	270.35
" C. Nicol	49.25	135.00	90.00	274.25
" E. B. Relf	37.99	105.00	68.25	211.24
" Louise Faust	38.30	105.00	70.00	213.30
" Sallie Boyce	38.21	105.00	70.00	213.21
" F. L. Smith	38.07	105.00	70.00	213.07
" V. Russell	38.30	105.00	70.00	213.30
" Ellen Moran	38.21	105.00	.....	143.21
" C. Lichenstein	38.30	105.00	.....	143.30
" A. A. Finch	.....	105.00	61.25	166.25
" E. J. Young	.....	.....	200.00	200.00
Forward	8,237.26	22,983.00	13,739.55	
19 Amount brought forward	8,237.26	22,983.00	13,739.55	
No. 20.	BARRACKS, OR No. 15.			
Mrs. D. R. Miller	76.41	216.00	102.60	395.01
Miss Helen M'Carthy	58.96	162.00	108.00	328.96
" Mary M'Cann	49.10	135.00	82.20	266.30
" M. A. Ferguson	49.10	135.00	86.10	270.20
" Marie L. Points	38.20	105.00	59.50	202.80
" Lizzie Donovan	38.30	105.00	.....	143.30
" Julia Hedges	36.55	105.00	70.00	211.55
Mrs. M. F. Gerrard	28.07	105.00	132.00	265.07
Miss K. Howley	.....	.....	70.00	70.00
No. 21.	FILLMORE, OR No. 16—BOYS.			
Dr. James Burns	70.75	250.00	.....	325.70
Miss Antonis Hart	47.75	135.00	90.00	272.75
" Ella M. Brown	49.25	135.00	85.80	270.05
" Jane M'Anulty	36.92	105.00	63.25	205.18
" Maria Peres	38.21	105.00	64.75	207.96
" Honora Brown	38.21	105.00	66.75	209.96
" A. F. Duval	38.30	105.00	68.25	211.55
" Mary L. Barrett	36.84	105.00	70.00	211.84
Mr. W. J. Gahan	.....	.....	200.00	200.00

20 No. 22. FILLMORE, OR No. 16—GIRLS.

Mrs. V. Ducatel	65.55	180.00	120.00	365.55
Miss Emily Wagner	59.07	162.00	108.00	329.07
" Kate Toole	49.10	135.00	90.00	274.10
" Leonie Chevallo	49.25	135.00	90.00	274.25
" Ellen Carey	38.30	105.00	70.00	213.30
" Emma Ducoing	38.30	105.00	70.00	213.30
" A. M. Woods	38.30	105.00	70.00	213.30

No. 23. M'DONOGH, No. 9—BOYS.

Mr. Gustave Andry	88.35	255.00	153.05	500.51
Mrs. M. A. Doriocourt	58.76	162.00	108.00	328.76
Miss Ellen Quayle	49.25	135.00	90.00	274.25
" Rebecca Smith	49.25	135.00	90.00	274.25
" M. Bayhi	38.21	105.00	66.75	209.96
" Laura C. Harris	34.71	105.00	66.75	206.46
Mr. C. A. Barnes	.....	.....	200.00	200.00

No. 24. M'DONOGH, No. 9—GIRLS.

Mrs. A. E. Van Camp	65.55	180.00	108.00	353.55
" Paul Ducatel	49.25	135.00	90.00	274.25
Miss Louise Van Dycke	38.21	105.00	64.75	207.96
" Eugenie Desdunes	38.30	105.00	68.25	211.55

21 No. 25. M'DONOGH, No. 2.

Miss C. Hubbard	57.21	216.00	140.40	413.61
Mrs. Anna Bell	59.07	162.00	108.00	329.07
Miss M. O. Carter	59.07	162.00	108.00	329.07
" Rosa T. Moore	49.19	135.00	88.05	272.15
" Julia White	49.25	135.00	90.00	274.25
" Edith Harrison	49.18	135.00	88.05	272.23
" Susan Smith	49.25	135.00	90.00	274.25
" F. F. Huberwald	38.30	105.00	70.00	213.30
Mrs. H. Chaery	38.30	105.00	70.00	213.30
Miss Louise Lynch	36.62	105.00	69.15	210.77
" Lizzie Kennedy	38.30	105.00	70.00	213.30
" Mary Murphy	38.30	105.00	70.00	213.30
Mrs. Sylvia Easton	.....	162.00	108.00	270.00

No. 26. M'DONOGH, No. 3.

Mr. E. H. Tepagnier	93.05	255.00	.....	348.05
Mrs. M. F. Stevens	59.07	162.00	81.00	302.07
Miss H. M'Carthy	59.07	162.00	105.65	336.72
" M. Marshall	47.68	135.00	70.95	253.63
" M. A. Stewart	47.46	135.00	85.80	268.26
" Lorenza Bertas	49.25	135.00	85.80	270.05
" Mary Gordon	38.30	.....	.....	38.30
" M. E. Anderson	38.30	105.00	.....	143.30
" K. Delesdernier	33.42	105.00	26.25	164.67
" Alice Clark	1.32	.....	.....	1.32
" Ellen Kennedy	38.30	105.00	62.40	205.70
Miss Rita C. Monrose	32.14	105.00	70.00	207.14
22 Miss Kate Quaid	.....	105.00	70.00	175.00
" E. B. Thomas	.....	105.00	86.10	191.10
Mr. Ulric Bettison	.....	.....	100.00	100.00
Miss I. Warner	.....	.....	70.00	70.00

No. 27. MARIGNY.

Mr. T. J. O'Sullivan	87.55	240.00	.....	327.55
Miss Ellen Gow	57.27	162.00	108.00	327.27
" M. S. Wilson	59.07	162.00	108.00	329.07
Mrs. A. L. Savio	49.25	135.00	90.00	274.25

Miss M. E. Cuggy	49.25	135.00	83.25	267.50
" Lucy Tallon	38.30	105.00	70.00	213.30
" Delphine Points	38.30	105.00	63.00	206.30
" Annie Scott	38.30	105.00	70.00	213.30
" K. J. Hughes	.....	.....	70.00	70.00
No. 28. WASHINGTON.				
Miss L. B. Wilder	78.81	216.00	144.00	438.81
" Annie Sheean	59.07	162.00	108.00	329.07
" Emma Prados	59.07	162.00	70.20	291.27
Mrs. Sophie Blancq	49.25	135.00	61.20	245.45
Miss Julia Chevillon	49.25	135.00	90.00	274.25
" Mary V. Clark	38.05	105.00	70.00	213.05
Mrs. Parmela Cucullu	38.30	105.00	70.00	213.30
Miss Rosa Dione	38.07	105.00	70.00	213.07
" Esther Brandao	38.30	105.00	70.00	213.30
23 **No. 29. M'PONOGH, No. 12.**				
Mr. A. B. Chandeler	93.05	255.00	.....	348.05
Miss Bridget Nolan	59.07	162.00	167.85	388.92
" J. A. Mayberry	58.80	162.00	108.00	328.80
" C. L. Stewart	49.25	135.00	88.85	273.10
" K. L. Magnon	48.96	.....	.....	48.96
" Kate E. Murphy	38.30	105.00	69.10	212.40
" Rebecca Fortune	38.30	.....	.....	38.30
" Marcella Curley	38.30	105.00	.....	143.30
" M. O. Reynolds	37.86	105.00	70.00	212.86
" Mary M'Elligott	38.30	105.00	70.00	213.30
" A. E. O'Brien	.....	105.00	66.95	171.95
" Mary Moore	.....	.....	65.15	65.15
No. 30. M'CARTHY.				
Miss M. D. Cooper	72.23	198.00	.....	276.23
" Jane Donnelly	49.25	135.00	78.75	263.00
" J. Fitzgerald	37.15	105.00	70.00	212.15
" Mary L. Stokes	37.99			
Mrs. H. Kilshaw	.....	105.00	70.00	175.00
Miss J. F. Cripps	.....	.....	70.00	70.00
Forward	12,478.77	34,987.00	21,332.70	
24 Amount brought forward	12,478.77	34,987.00	21,332.70	
No. 31. HANCOCK OR M'D., No. 19.				
Miss M. A. Murphy	72.05	198.00	122.10	393.15
" E. J. O'Hara	38.30	105.00	63.00	206.30
" S. Llambias	38.30	105.00	70.00	213.30
No. 32. GENTILLY.				
Mrs. C. Collerton	72.23	198.00	.....	270.23
No. 33. PONTCHARTRAIN.				
Miss M. A. Riley	59.07	162.00	108.00	329.07
No. 34. FULTON.				
Miss H. L. Garrett	72.23	198.00	132.00	402.23
Mrs. A. W. Brown	59.07	162.00	132.00	353.07
Miss J. J. Ingraham	49.25	135.00	90.00	274.25
" M. E. Golden	49.25	135.00	90.00	274.25
" Amelia Kelsey	48.96	135.00	.....	183.96
Mrs. L. Ward	38.30	105.00	70.00	213.30

No. 35. LAUREL.

Mr. M. M. Lowe	93.05	255.00	200.00	548.05
Miss M. E. Tank	59.07	162.00	108.00	329.07
" Ellen Clapp	49.25	135.00	90.00	274.25
" Maud O'Brien	49.25	135.00	90.00	274.25
" L. E. Lambourne	34.27	105.00	65.00	204.27
Mrs. H. M. Wells	36.40	105.00	.....	141.40
Miss K. L. Glenn	38.30	105.00	.....	143.30
" N. S. O'Connor	38.30	105.00	.....	143.30
" Helena Phillips	.....	.....	65.20	65.20
Forward	13,473.67	37,732.00	22,828.00	
25 Amount brought forward	13,473.67	37,732.00	22,828.00	

No. 36. M'DONOUGH, No. 1.

Mrs. M. E. Mallam	78.81	216.00	144.00	438.81
Miss M. Creswell	59.70	162.00	144.00	365.07
" Bettie Murphy	57.27	162.00	90.45	309.72
" M. Emanuel	49.25	135.00	6.75	191.00
" M. A. Mulligan	49.25	135.00	90.00	274.25
" Agnes Boyce	38.30	105.00	62.50	205.80
Mrs. W. J. Kleinpeter	38.30	105.00	.....	143.30
Miss Agatha Meehan	38.30	105.00	70.00	213.30
" Emma J. Taylor	.....	105.00	70.00	175.00
" L. C. King	.....	.....	52.95	52.95

No. 37. M'DONOUGH, No. 8.

Mr. Louis Leche	93.05	255.00	200.00	548.05
Miss M. P. Hero	59.07	162.00	108.00	329.07
" Nettie Parr	59.10	162.00	97.20	318.30
" I. Fredericks	49.10	135.00	81.00	265.10
" B. A. Houghton	49.25	135.00	.....	184.25
" Mary J. Dowty	38.30	105.00	70.00	213.30
" Margaret Horan	36.92	105.00	57.15	199.07
" May Lemkin	38.25	105.00	65.45	208.70
Mrs. B. L. Beck	38.30	105.00	70.00	213.30
Miss Jessie Wilbar	38.30	105.00	68.25	211.55

No. 38. LIVE OAK.

Miss M. A. Wickes	78.81	216.00	144.00	438.81
" M. Bridgins	59.07	162.00	108.00	329.07
" I. E. O'Brien	49.25	135.00	87.75	272.00
" Eliza Wheaton	49.25	135.00	25.50	209.75
" H. M. Jourdan	38.30	105.00	.....	143.30
Miss Ruth H. Welsh	4.36	.....	.....	4.36
26 " K. C. Connelly	35.64	105.00	61.50	202.14
" Georgia Hodgkins	38.30	105.00	70.00	213.30
Miss E. Wilbar	.....	....	66.75	66.75
Forward	14,734.50	41,299.00	24,939.20	

No. 39. CHESTNUT.

Miss S. S. McEnery	65.55	180.00	114.80	360.35
" P. E. Packard	37.05	162.00	108.00	307.05
" L. E. Sterling	49.10	135.00	88.05	272.15
" M. E. Sommerville	48.96	135.00	88.05	271.01

No. 40. MAGNOLIA.

Mrs. L. M. Williams	78.81	216.00	134.60	429.41
Miss Blanche Cenas	59.07	162.00	105.30	326.37
Mrs. Josephine Reed	58.96	162.00	102.60	323.56
" C. D. Cooke	48.85	135.00	88.05	271.90
" Cora P. Beecher	47.75	135.00	87.75	270.50

Miss Etna Portner	38.30	105.00	.....	143.30
" Anna B. Cook	38.30	105.00	70.00	213.30
" Sidonia Holmes	34.80	105.00	55.00	194.80
No. 41. M'DONOUGH, No. 10.				
Mr. J. R. Hutchinson	93.05	255.00	200.00	548.05
Miss M. E. Finnerty	59.07	162.00	108.00	329.07
" E. B. Brown	59.07	162.00	105.30	326.37
" Irene Rondeau	47.75	135.00	87.75	270.50
" Minnie Weaver	49.25	135.00	90.00	274.25
" C. A. Forbes	38.30	105.00	70.00	213.30
" M. A. Reynolds	38.30	105.00	70.00	213.30
" Nellie Pickett	.....	105 00	70.00	175.00
" M. A. Flanagan	38.30	105.00	70.00	213.30
No. 42. KELLER OR M'DONOUGH, No. 20.				
Mrs. C. S. Reese	78.35	216.00	144.00	438.36
Miss L. C. Whittaker	55.47	162.00	108.00	325.47
Miss M. J. Dornan	58.36	162.00	108.00	328.36
27 " M. J. Kearney	45.85	135.00	90.00	270.85
" A. L. Beecher	47.60	135.00	87.75	270.35
Mrs. M. W. Carroll	38.30	105.00	70.00	213.30
Miss M. G. M'Lorenan	28.86	.....	.....	202.96
" D. L. Bostick	37.06	105.00	68.25	210.31
" Elise Hunter	38.30	105.00	68.25	211.55
" E. Allen	38.30	105.00	70.00	213.30
" A. E. M'Lorenan	.....	105.00	69.10	.....
Forward	16,229.54	45,640.00	27,735.80	
No. 43. DRYADES.				
Mrs. Ellen Hamilton	72.23	198.00	119.65	389.88
Miss C. A. Warner	59.07	162.00	108.00	329.07
" J. E. Morton	58.96	162.00	.....	220.96
Mrs. M. E. Westerfield	49.25	135.00	90.00	274.25
" M. A. Martinez	38.21	105.00	70.00	213.21
" Mary Clarkson	38.30	105.00	70.00	213.30
Miss Ida Halberg	38.21	105.00	70.00	213.21
" M. E. Verlander	28.00	105.00	65.20	198.20
No. 44. ST. ANDREW.				
Mr. C. P. Guichard	89.32	240.00	152.00	481.32
Mrs. P. H. Saffold	58.96	162.00	.....	220.96
Miss E. E. Vigers	47.35	135.00	88.05	270.40
" Amelia Chiapella	38.30	105.00	70.00	213.30
" Mary E. Penn	35.95	105.00	70.00	210.95
" Jennie G. Simms	38.21	105.00	70.00	213.21
" J. C. Berhel	38.30	105.00	70.00	213.30
No. 45. M'DONOUGH, No. 4—BOYS.				
Mr. J. J. O'Connor	93.05	255.00	.....	348.05
Miss L. S. Howard	58.10	162.00	78.85	298.95
Mrs. M. E. Fortier	49.25	135.00	90.00	274.25
Miss Mathilda Oleson	38.21	105.00	68.25	211.46
Miss Ada V. Rousseau	38.30	105.00	70.00	213.30
28 Mr. S. C. Clark	.....	.....	200.00	200.00
No. 46. M'DONOUGH, No. 4—GIRLS.				
Mrs. L. B. Anderson	65.28	180.00	120.00	365.28
" A. E. Chase	59.07	162.00	105.30	326.37
Miss M. A. Gardiner	49.25	135.00	70.85	255.10
" Maggie Redlich	47.60	135.00	58.45	241.05
" N. E. Nicholls	38.30	105.00	70.00	213.30
" E. C. Wheelahan	37.06	105.00	68.25	210.31
Forward	17,531.63	49,258.00	29,868.65	

No. 47.	M'DONOUGH, No. 5.			
Mrs. M. E. Holmes	87.55	240.00	160.00	487.55
Miss E. F. Hayden	59.07	162.00	108.00	329.07
Mrs. M. J. Williams	59.07	162.00	108.00	329.07
Miss J. E. Mooney	49.25	135.00	88.85	273.10
" M. J. Turner	49.25	135.00	90.00	274.25
" Maggie Crawford	39.95	105.00	.....	140.95
" H. E. Lawrence	38.30	105.00	70.00	213.30
No. 48.	M'DONOUGH, No. 6.			
Miss A. E. Kilgrove	87.55	240.00	160.00	487.55
" F. S. Delacey	51.87	162.00	91.25	321.87
" E. L. Rodriguez	59.07	162.00	108.00	329.07
" Annie Leddy	49.25	135.00	90.00	274.25
" M. A. Sullivan	49.25	135.00	90.00	274.25
" Sallie Payne	47.46	135.00	90.00	272.46
" Lizzie Keeling	38.30	105.00	70.00	213.30
" Susan Shriever	38.30	105.00	66.50	209.80
" Julia Clapp	36.62	105.00	66.75	208.37
No. 49.	M'DONOUGH. No. 7—BOYS.			
Mr. T. L. Preston	93.05	255.00	200.00	548.03
Miss H. O. White	59.07	162.00	108.00	329.25
Miss L. E. Prest	54.25	150.00	90.00	294.25
29 Miss Fannie I. Dart	49.25	135.00	90.00	274.25
" E. Gardenghi	38.30	105.00	70.00	213.30
" Anna Dyer	38.21	105.00	70.00	213.30
No. 50.	M'DONOUGH, No. 7—GIRLS.			
Miss Emma T. Rosner	78.81	216.00	144.00	438.81
" Isabel Ferguson	59.07	162.00	108.00	329.07
" May Brooks	54.50	135.00	90.00	279.50
" Sarah H. Evans	49.25	135.00	90.00	274.25
" May E. Blood	25.36	.....	.....	25.36
" May Clack	38.30	105.00	66.50	209.80
" M. H. Hallaran	.....	105.00	63.75	168.75
Forward	19,205.16	53,356.00	32,516.25	
No. 51.	LINCOLN.			
Miss Eliza Clark	72.23	198.00	132.00	403.23
" C. A. Beck	38.30	135.00	90.00	143.30
No. 52.	LEONTINE.			
Mrs. R. Railbon	72.23	198.00	132.00	402.23
Miss Kate Kelly	58.36	162.00	102.60	322.96
" C. G. McManus	45.35	135.00	85.50	265.85
" Annie Theil	36.40	105.00	70.00	211.40
" A. L. Pascoe	37.86	105.00	61.70	204.56
No. 53.	BROADWAY.			
Miss C. W. Bentley	43.80	120.00	108.00	271.80
No. 54.	JEFFERSON, No. 2.			
Miss Florence Gordon	56.32	198.00	144.00	398.32
" Mary A. Tallien	59.07	162.00	105.65	326.72
Mrs. G. A. Anderson	49.25	135.00	90.00	274.25
Miss Isabel Ryan	38.30	105.00	70.00	213.30
30 No. 55.	WASHINGTON, No. 2.			
Mrs. F. V. Hooper	72.23	198.00	140.00	414.23
Miss Nanon J. Kelly	57.27	162.00	108.00	327.27
" Mathilda Reuter	49.25	135.00	90.00	274.25
Miss N. B. Harthorne	38.30	105.00	70.00	213.30

No. 56. SHORT STREET.

Mrs. J. R. Dicks	72.23	198.00	132.00	402.23
Miss Lizzie Kelly	59.07	162.00	108.00	329.07
" Emily Oeschner	49.25	135.00	90.00	274.25
" May A. Leddy	49.25	135.00	90.00	274.25
" R. T. Murphy	38.30	105.00	70.00	213.30
" Emma Quick	38.30	105.00	70.00	213.30
Total amount due teachers.	20,136.08	56,554.00	34,679.70	

SUPERNUMERARIES.

	1882.	1884.	Total.
Anita Ball	3.50	1.25	4.75
O. Black	.....	5.00	5.00
Matilda Bernard	5.40	.....	5.40
M. Bull	.....	12.50	12.50
J. Brown	.....	16.25	16.25
O. Brennan	.....	5.00	5.00
O. Cornwall	1.15	.....	1.15
R. Carolan	16.50	.....	16.50
R. C. Chamberlain	.....	7.50	7.50
M. M. Campanel	.....	1.25	1.25
E. M. Clark	.....	41.25	41.25
B. Carroll	.....	1.25	1.25
A. J. Doherty	1.15	1.25	2.40
N. Donovan	1.15	40.00	41.15
Alicia Dickson	1.15	.....	1.15
Mary Daly	12.85	.....	12.85
Selina Duvic	6.00	15.00	21.00
Emily Dart	10.80	.....	10.80
M. De Boer	.....	13.75	13.75
D. Daignan	.....	32.50	32.50
H. Diamond	.....	36.25	36.25
E. B. Eagleson	12.85	.....	12.85
Alica Ellis	2.35	.....	2.35
Georgia Fountain	1.15	.....	1.15
A. A. Finch	9.40	.....	9.40
M. Flannagan	.....	4.35	4.35
J. Gallagher	1.50	.....	1.50
Kate Hughes	.60	.....	.60
31 L. Hentich	2.35	.....	2.35
Kate Howley	10.80	.....	10.80
B. Hines	10.00	27.50	37.50
M. Hallaron	2.35	12.50	14.85
Irene Hester	18.00	1.25	19.25
Louisa Hornbeck	1.50	.....	1.50
Ida Halberg	4.65	.....	4.65
E. Hamilton	.....	1.90	1.90
A. Harper	.....	2.50	2.50
C. M. Holland	.....	7.50	7.50
N. Houlgrave	.....	35.00	35.00
Forward	137.15	322.50	
M. Harrison	.....	41.25	41.25
M. G. Holmes	.....	2.50	2.50
B. Harthorne	.....	1.25	1.25
Daisy Jackson	2.35	.....	2.35
N. James	.....	5.65	5.65
I. Joyce	.....	36.25	36.25
L. Kilshaw	2.35	16.25	18.60
A. C. Kearney	.....	1.25	1.25
Mary Kennedy	12.85	36.25	49.10
A. Kennedy	.....	6.25	6.25
M. D. Kennedy	.....	17.50	17.50

J. Lahargue	.....	13.75	13.75
M. A. Michel	.....	2.50	2.50
L. Mulvey	1.15	.....	1.15
A. Michel	4.15	.....	4.15
B. Mahan	.....	1.25	1.25
B. Maher	.....	10.00	10.00
M. D. Moore	.....	41.25	41.25
M. Michel	.....	3.75	3.75
Lizzie Neelis	2.35	.....	2.35
N. E. Nicholls	2.65	.....	2.65
L. Orrantia	1.50		
Agatha Pretus	2.35		
F. Powers	1.15		
R. M. Pascoe	.75	5.00	
L. A. Patin	.....	1.25	
G. Peyton	.....	3.75	
A. Payne	4.45	6.25	
M. Ryan	2.35		
S. J. Stephens	5.25	7.50	
S. A. Steele	3.50	21.25	
M. Smith	.....	10.00	
L. Smith	.....	11.25	
32 C. M. Spellicy	.....	6.25	
J. Simon	.....	2.50	
M. Spellicy	.....	35.00	
S. Smith	2.50	6.25	
N. Shelly	3.50	2.50	
A. Stickney	.....	3.75	
C. Stringer	6.65	1.25	
D. Sheean	.....	1 25	
Kate Sullivan	.....	7.15	
Martha Spence	.....	1.15	
Rosalie Schoeffer	.....	1.15	
E. J. Taylor	.....	5.40	
Alice Young	.....	12.85	
Total amount due supernumeraries	226.65	684.40	

PORTRESSES.

	1882.	1884.
B. Allen	20.00	38.00
C. Amman	.....	55.00
E. Bernard	20.00	50.00
E. O. Boyle	18.00	50.00
M. Barrow	20.00	38.00
B. Booth	12.00	24.00
Sarah Brooks	20.00	38.00
B. Blanc	.....	55.00
J. Burke	.....	38.00
C. Byrne	30.00	55.00
D. Burt	15.00	27.50
D. Cosgrove	15.00	27.50
M. Collins	.....	38.00
E. Cure	20.00	27.50
E. Cronan	30.00	55.00
M. Caldwell	.....	20.00
L. Chevollean	30.00	
E. Chineau	15.00	27.50
M. Caruthers	18.00	
M. T. Cochran	20.00	38.00
M. Carroll	.....	38.00
M. Connelly	33.00	58.00
M. Collier	20.00	38.00
M. Duignan	20.00	38.00
H. Daly	25.00	50.00
M. Donnelly	.....	30.00

C. Denny	.....	38.00
B. Doyle	.....	36.00
E. Ducts	.....	18.00
J. Foster	25.00	
A. Gould	.....	50.00
R. Hevyart	33.00	58.00
M. Housman	25.00	50.00
B. Heavy	.....	38.00
Forward	524.00	1,192.00
33 Amount brought forward	524.00	1,192.00
F. Jacquet	20.00	
C. Killelea	20.00	27.50
J. Kinney	20.00	
G. H. Kelly	33.00	40.00
M. Kelly	30.00	55.00
Mary Kelly	20.00	38.00
M. Lane	8.00	15.00
M. Lardner	.....	36.00
C. Moffat	10.00	10.00
E. McCabe	20.00	38.00
M. M'Cormack	20.00	38.00
E. M. M'Ginnis	20.00	38.00
B. M'Keone	15.00	27.50
E. Nides	25.00	
M. Norton	22.50	41.00
H. O'Connor	20.00	38.00
M. A. Pickett	25.00	50.00
E. Rhobacker	18.00	36.00
M. Riley	25.00	50.00
M. J. Raynal	20.00	38.00
John Ryan	25.00	50.00
M. Ryan	.....	38.00
M. Schriever	18.00	36.00
M. J. Stansbury	20.00	
M. Shea	20.00	38.00
M. White	30.00	55.00
J. C. Watkins	10.00	19.00
A. Wilcox	25.00	50.00
A. Waters	20.00	
Total amount due portresses	1,163.50	2,094.00

34 The following names are not on the book showing amounts due teachers, supernumeraries, and portresses, but have been included in list given above:

Ellen Moran	No. 19	For 1883	105.00
Lizzie Kennedy	No. 25	" 1882 and 1883	143.50
K. Quaid	No. 26	" 1883	105.00
A. E. O'Brien	No. 29	" 1883	105.00
E. J. Taylor	No. 36	" 1883 and 1884	175.00
E. Wilbur	No. 38	" 1884	66.75
Etna Portner	No. 40	" 1883	105.00
Nellie Rickett	No. 41	" 1883	105.00
C. A. Beck	No. 51	" 1883	30.00 increase.
A. Kennedt	Sup.	" 1884	5.00 "
John Ryan	Portress	" 1884	50.00
M. Harrison	Sup.	" 1884	17.50 increase.

35 *Recapitulation.*

Amounts due for 1882:

Teachers	20,136.08	
Supernumeraries	226.65	
Portresses	1,083.50	
Total		21,446.23

Amounts due for 1883:		
Teachers		56,554.00
Amounts due for 1884:		
Teachers	34,679.70	
Supernumeraries	684.40	
Portresses	2,094.00	
Total		37,458.10
Grand total		115,458.33 (should be $115,558.33)

Error in the additions (mistake of $100).
Grand total, $115,558.33. (Ordinance 14675.)

36 *Petition of Intervention of the Drainage Commission of New Orleans and Order of Court Thereon.*

Filed November 17th, 1898.

Civil District Court, Division "D."

STATE *ex Rel.* MISS WILDER ET AL.
vs.
THE BOARD OF LIQUIDATION OF THE CITY DEBT. } No. 57806.

To the honorable the judges of the civil district court for the parish of Orleans:

The petition of intervention herein of the Drainage Commission of New Orleans, a body politic created by the General Assembly of Louisiana by the act No. 114 of 1896, approved July 9, 1896, which act has been amended by act No. 63 of 1898, approved July 9th, 1898, of which R. M. Walmsley, of the city of New Orleans, is president, respectfully shows:

First. That your petitioner has a legal right and interest to intervene in this cause and to oppose the claim and demand of the relator herein, and it refers to the said acts of legislation and makes the same a part of this petition of intervention.

Second. That, as appears by said act No. 114 of 1896, the city of New Orleans devised a certain plan of drainage and the same was adopted by the council of said city by ordinance of the city approved July 10th, 1895, and the said plan of drainage and a copy of the ordinance adopting the same are hereto annexed and made part of this petition as Exhibits I A and I B, and the said plan of drainage was adopted by the General Assembly of Louisiana by said act of 1896, with power to said drainage commission to modify the same as circumstances might require.

Third. That by said legislation of the General Assembly of Louisiana of 1896 that portion of the funds in the hands of the board of liquidation, under the provisions of act No. 110 of the General Assembly of Louisiana of 1890, accruing to public
37 works, &c.—that is to say, to permanent public improvements—was and is dedicated and applied for the purpose of drainage of the city of New Orleans under the provisions and for all

the purposes of the said act No. 114 of 1896, as well as all moneys and funds then under the control of the city of New Orleans or thereafter to be received arising from the sale of street railroad franchises and other franchises, and it was provided that all moneys or funds thus dedicated should be drawn and expended by said drainage commission by checks, signed by the president and secretary and countersigned by the mayor.

Fourth. That by the sixth section of said act No. 114 of 1896 it was provided that the works performed by said commission should so far as possible be done in such manner as to benefit all parts of the city without discrimination as to locality, and in order to raise funds for the purpose of doing such work speedily and on an extensive scale said Drainage Commission of New Orleans should have power to issue and dispose of its negotiable bonds to an amount not exceeding $5,000,000 in sundry denominations, bearing interest at a rate not exceeding five per centum per annum, payable semi-annually, to be sold by said commission at not less than par, and further provision was made in said section for the form and maturity of said bonds, and it was further therein provided that all moneys and funds dedicated and applied as aforesaid by said act to the purpose thereof were and are consecrated to the payment of the principal and interest of said bonds, and by section 7 of said act it was further provided that all the provisions of said act respecting the dedication and application of funds and money should constitute a contract with the holder or holders of bonds issued as aforesaid, the obligation of which contract should not be impaired and should be enforceable by any holder of said bonds by proceedings of mandamus and injunction, or by other
37½ proper proceedings in court; that by said amending act No. 63 of 1898 said sections 6 and 7 of the said act of 1896 were amended and re-enacted so as to limit such issue to $1,500,000 in denomination of $1,000 each, and it was declared that all moneys and funds dedicated and applied to purposes of drainage aforesaid were primarily consecrated to the payment of the interest on said bonds and the redemption of the principal thereof with the detail set forth in said amending act, and that all of the said provisions respecting the dedication and application of funds and moneys should constitute a contract primarily with the holder or holders of said bonds, as aforesaid, to the extent aforesaid, and also with each and every person or corporation that might have entered into contracts with the said commission, and the obligation of said contract as to dedication and application of funds and moneys should not be impaired and might be enforced by any holder of said bonds or by any contract creditor of said commission by proceedings of mandamus and injunction, or by other proper proceedings in court.

Fifth. That in proceedings brought by the State of Louisiana against the persons composing the said Drainage Commission of New Orleans and decided by the supreme court of Louisiana June 21, 1897, the said act No. 114 of 1896 was decided to be a proper and valid act of legislation, and the contracts hereinafter set forth were entered into in view of said decision.

Sixth. That on the faith of the drainage legislation above set forth of 1896, the dedication and consecration of funds thereby, and the contract rights therein recognized and established, your intervenor has entered into large contracts for the construction of the work so directed to be done, and, among others, as follows:

38

With the National Contracting Co. by contract on August 9, 1897, for an amount of work estimated at	$1,768.428
For the Jordan Avenue canal, with F. B. Camors; total cost By contract of April 22nd, 1898.	10,054.67
For Seventeenth St. canal, with E. A. Grasser; total cost By contract of Jan. 18, 1897.	46,170.70
Tulane University, Dec., 1897	2,500.00
For reconstruction and excavation of certain canals by contract with J. J. Keegan By contract of April 2, 1898.	7,341.98
	1,834,465.35

Whereon payments have been made of $317,552.05, leaving outstanding and yet to be paid upon said contracts as entered into, up to the 12th of May, 1898, the sum of $1,516,913.30. Since May 12, 1896, there has been paid upon said contracts or some of them the sum of 479,811.01, leaving still to be paid upon said contracts the sum of $1,037,102.29, which must be met with the funds set apart and consecrated by the act of 1898, No. 114, and cannot be met if such funds are reduced or impaired in anywise.

Seventh. That when said contracts were made it was well understood and was a fact that the funds so dedicated by said act coming in, as they were expected to come from time to time, were not sufficient to pay for the work to be done under said contracts, especially under that of the National Contracting Company, which was the principal one in amount, as the payments would fall due, but that the bonds provided by the 6th section of the said act of 1896

39 would be issued and sold in accordance with the plan of speedy and extensive work contemplated by said section.

That accordingly, under said provisions, this intervenor has advertised and sold to the highest bidder and for sums considerably above par its negotiable bonds made in accordance with said law to the amount or issue of $500,000, dated November 1, 1897, having forty years to run from said date, bearing interest at the rate of five per cent. per annum, payable semi-annually, and said bonds are now outstanding in the hands of *bona fide* purchasers, and it will be necessary in like manner to sell the remaining million dollars of said bonds.

Eighth. That all of the funds so, as aforesaid, dedicated and consecrated by said drainage legislation to the performance of said

work of drainage and the payment of said contracts and of the principal and interest of said bonds issued and to be issued are entirely and absolutely necessary and essential for said purposes, and if any of the funds coming to intervenor under said act of 1896 from the said law 110 of 1890 and from the portion thereby dedicated to permanent public improvements and so, as aforesaid, consecrated to the work of this intervenor are diverted to any other purpose, such diversion will be, and is hereby averred to be, a violation of the provisions of the said act No. 110 of 1890 and the constitutional amendment proposed thereby and adopted in 1892, and a violation of the said acts No. 114 of 1896 and 63 of 1898, and an impairment of the obligation of the contracts made and established by said act No. 110 of 1890 and by said constitutional amendment of 1892, and an impairment of the obligation of the said contracts so entered into by this intervenor with said contractors, and especially with the National Contracting Company aforesaid, and of the contracts evidenced by said bonds issued and sold by intervenors for the purpose of carrying out said contracts, and to be
40 issued and sold.

Ninth. That the contracts of intervenor hereinbefore set forth were made and entered into and its said bonds prepared and provided, as aforesaid, before the adoption of the constitution of 1898, to wit, before May 12, 1898; that the alleged assumption by the city of New Orleans of the claims of relators was not made until on and after July 26, 1898, and long after the said contracts of this intervenor had been entered into, as aforesaid, and after arrangement had been made for the issue of said bonds, and after $500,000 of same had been advertised, sold, and issued, as aforesaid, as will appear by the ordinances referred to and relied upon by relators.

Tenth. This intervenor further allege- that the articles 315, 316, and 317 of the constitution of Louisiana and any other provisions of said instrument upon the same subject-matter as sought to be applied by relators in this proceedings and for the purpose of obtaining the relief claimed by them herein are illegal, null, void, and unconstitutional.

1. They violate the enabling act No. 52 of 1896, approved July 7, 1896, of the legislature of Louisiana, whereby the convention that framed the constitution of 1898, which was to be adopted without submission to the people, was strictly limited in its powers and was prohibited from enacting or ordaining or framing any article or ordinance on the subjects so withheld from its competence, especially any article or ordinance whereby the bonded indebtedness of any parochial, municipal, levee, or other political corporation of the State of Louisiana should be affected, impaired, or scaled, or the principal or interest thereof limited, reduced, suspended, or abolished without the consent of the holders of such bonds or security, which consent has never been given by any holder.

41 2. They violate section 10 of article 1 of the Constitution of the United States, whereby the State of Louisiana is forbidden to pass any law impairing obligations of contracts.

3. They violate the provisions of article 14 of the amendments of

the Constitution of the United States, which prohibit any State from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States or depriving any person of property without due process of law.

4. They violate the provisions of and impair the obligations of the contracts established under the enactments of said act No. 110 of 1890 and the constitutional amendment submitted thereby and adopted in 1892:

(a.) By the issue and sale of bonds for purposes not provided, but inhibited, by *a* said act and amendment.

(b.) By impairing and infringing upon the surplus of proceeds from the tax so provided for permanent public improvement by said act and amendment, and so, as aforesaid, consecrated and dedicated to drainage by the said act of 1896.

(c.) By impairing the obligation of the contracts made under said act of 1890 and amendment of 1892, and especially provided for in section 16 of said act of 1890.

(5.) They impair the obligation of the contracts made, as aforesaid, by this intervenor and the contract obligations in favor of the holders of bonds issued and sold by intervenor under the said drainage act of 1896 and its amendments, as aforesaid, and bonds still to be issued, which depend for their fulfillment and solution upon said funds dedocated, as aforesaid, by the act of 1896 and amendments, and cannot be met unless said funds remain unimpaired.

Eleventh. That the funds dedicated to the work of intervenor being so established and limited, and said contracts having been made and said bonds issued by it, — is the legal duty of the
42 Drainage Commission of New Orleans to intervene herein and to protect said funds and the contracts made and bonds issued by it. It specially claims the right and immunities hereinbefore set up under the Constitution of the United States, as well as the other rights, privileges, and immunities hereinbefore pleaded.

And the premises considered, your intervenor prays leave to intervene herein and to oppose the claims and demands of relators, and for due citation and other process, and that the demand of the relator- may be rejected, and for costs and general relief.

(Signed) HOWE, SPENCER & COCKE,
Att'ys for Intervenor.

Nov. 15, 1898.
Service accepted for relators.
(Signed) CHAS. J. THEARD,
ARTHUR McGUIRK, *Att'ys.*

Order.

Let this petition of intervention be filed as prayed for.
New Orleans, November 15th, 1898.
(Signed) N. H. RIGHTOR, *Judge.*

43 Ordinance No. 10991, council series, adopting the plan of drainage devised by the city of New Orleans, marked "I B," annexed to and made part of intervention of the Drainage Commission of New Orleans.

Filed November 17th, 1898.

I[a] goes up in original.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *July* 10, 1895.

No. 10991, council series.

An ordinance adopting a system of drainage for the city of New Orleans.

Whereas, the advisory board of drainage, after a thorough research and exhaustive labors have formulated a plan of drainage of the entire area of the city of New Orleans, and have submitted said plan to the council of the city of New Orleans for their approval, therefore, be it ordained that the plan of drainage as submitted by the advisory board be, and the same is hereby approved and accepted and made the plan of drainage to be put in execution in the city of New Orleans with this exception.

That the Broad Street canal, and the provisions made therefor, in making it the main canal for the drainage system, be amended so as to conform to a plan submitted by the city engineer providing for the covering of same.

Be it further ordained, That the plan and system of drainage for the city of New Orleans, as recommended in their report by the advisory board on drainage for the city of New Orleans, and as amended by plans of the city engineer relating to the covering of the main canal on Broad street, be, and the same are hereby approved and ratified by the common council of the city of New Orleans.

Be it further ordained, That the city engineer be and he is hereby directed to prepare detailed plans and specifications for the
44 executing of the work as provided in this ordinance.

And the said city engineer is hereby authorized to draw for the cost of the preparing of said detailed plans and specifications and continuance of said bureau from the funds in the treasury of the city of New Orleans set aside for drainage purposes, and the comptroller be and he is hereby directed to transfer the sum of $5,000 five thousand dollars from amount set aside for drainage purposes in accordance therewith.

Adopted by the council of the city of New Orleans, July 10, 1895.

(Signed) DAN. A. ROSE,
Clerk of Council.

Approved July 10, 1895.

(Signed) JOHN FITZPATRICK, *Mayor.*
(Signed) CLARK STEEN,
Secr. to the Mayor.

MAYORALTY OF N. O., *Nov.* 9, '98.

I hereby certify the above ordinance to be a true and correct copy of the original ordinance No. 10990, C. S., on file in this office.

(Signed) J. S. WATERMAN,
[SEAL.] *Chief Clerk of Mayor.*

Answer of the Board of Liquidation of the City of New Orleans.

Filed November 17th, 1898.

Civil District Court, Division "D."

STATE *ex Rel.* L. B. WILDER ET ALS.
vs.
BOARD OF LIQUIDATION OF THE CITY DEBT. } No. 57806.

45 Now *the* comes The Board of Liquidation of the City Deby, defendant herein, and, for answer to plaintiffs' petition and for return to the alternative writ of mandamus herein, it says:

First. That it denies all and singular the allegations of the petition of plaintiffs, except so far as may be hereinafter specially admitted.

Second. Further answering, respondent shows that it was created by act No. 133 of 1880, and that by section 2 of said act it is charged with exclusive control and direction of all matters relating to the bonded debt of the city of New Orleans; that in the issue of bonds or the application of their proceeds respondent has not only the right, but it is made its duty, by the said act of 1880 and other acts amendatory thereof or supplementary thereto, to examine and be satisfied as to the validity and correctness of any claim, either for bonds or funds, under its administration, and that by section 4 of the said act respondent is forbidden, under heavy penalties, to purchase, exchange, or retire any obligation of the city of New Orleans that shall be deemed fraudulent or invalid by any one of its members, in which latter event it is forbidden to purchase or retire the same until the holder or holders shall have applied to the proper court for relief, when, if final judgment be in his favor, it shall be deemed a valid obligation of the city; that by the said section severe penalties of fines and imprisonment at hard labor are prescribed for the auditing, funding, purchase, or retirement of any obligations not deemed valid by any member of the board or for the use of funds in their custody and care for any purpose other than those contemplated by the law.

Third. That respondent is the custodian and administrator, for the purpose of meeting the interest upon and eventually retiring all bonds of the city of New Orleans outstanding and unpaid at
46 the date the constitutional amendment of 1892 went into effect, premium bonds and constitutional bonds issued under said amendment and the act carrying the same into effect, and as to every act which it has lawful power to do in relation to the issuance of bonds or the disbursement of moneys which are or come

into its possession, it is a trustee for the parties by law entitled to said bonds and to receive the funds realized from the sale thereof or otherwise coming into the possession of respondent.

Fourth. That all of the functions, powers, duties, limitations, and restrictions pertaining or applying to respondent by said act 133 of 1880 are recognized and confirmed by the amendment to the constitution of the State adopted at the general election of 1892, and act 110 (or 36) of the General Assembly of 1890, which is part of the said amendment; that the said constitutional amendment and act are recognized in full force and effect by articles 314 and 318 of the constitution of the State of 1898.

Fifth. Further answering, respondent shows, and specially pleads, in defense of this suit that articles 315, 316, and 317 of the constitution of the State of Louisiana of 1898 are unconstitutional, null, and void and of no effect on the ground and for the reasons that they are in violation of section 10, article 1, and of the 14th amendment of the Constitution of the United States, in that they impair the obligation of contracts, specifically hereinafter set out, deprive persons of their property without due process of law, and deny them the equal protection of the laws, as is more particularly hereinafter set out.

Sixth. Further answering, respondent shows that the direction of article 317 of the constitution of 1898 that your respondent provide the funds requisite to pay the claims described in articles 315 and 316 of that instrument by the sale of a sufficient number of
47 constitutional bonds of the city of New Orleans of the issue provided for by act 110 of the General Assembly of the year 1890, and by the amendment to the constitution of the State submitted to the people by said act, and adopted at the general election of 1892, is violative of said section 10, article 1, and the 14th
48 amendment of the Constitution of the United States, as will more fully and in detail appear from the following, to wit:

(a.) By section 1 of the said constitutional amendment of 1892, which with act 110 (or 36) of 1890, part thereof, is the sole authority of respondent, the creature of statute, for the issuance of said bonds, it is declared that the former is for the purpose of retireing the then existing valid outstanding bonds of the city of New Orleans, including bond certificates or bonds issued under the act of the legislature of 1882, and to retire judgments then or thereafter rendered against the city on floating-debts claims, prior to 1879, entitled to be funded under act No. 67 of 1884; that the said bonds shall be applied by respondent to the retirement of the said outstanding bonds and judgments by the sale of the former and application of the proceeds thereof to pay or purchase said outstanding bonds or judgments or by exchanging the said constitutional bonds for bonds on the terms and in the mode prescribed by the legislature.

That for the payment of the interest and principal at maturity of said constitutional bonds and other bonds then outstanding and not retired under the amendment, and for the payment of the annual allotments and premiums of the premium bonds of said city, the latter is authorized and directed to levy annually and

until the full payment of the said bonds a special tax of one per cent. on all real and personal property of the city, the same to be paid over, as collected, to and applied by your respondent to the payment of the interest and principal at maturity of the said constitutional bonds, outstanding bonds not retired at the date of said amendment, and to the payment of the allottments of premium bonds and premiums extant in the hands of holders.

That said tax is declared to be the contract right of the holders of said bonds, and that after the payment of all the annual
49 interest on said constitutional bonds and bonds not retired as aforesaid, and the payment of said annual allottments of premium bonds and premiums extant in the hands of holders, and after making provision for a sinking fund at such time and of such amount as the legislature prescribes, the surplus of said one per cent. tax shall be disposed of as prescribed by the legislature.

That act No. 36, appearing in the published acts along with said constitutional amendment as act 110, of the General Assembly of 1890, being an act to carry into effect the said constitutional amendment, is, by the third paragraph of the latter, approved and confirmed in all of its parts as a contract between the city of New Orleans and the holders of the aforesaid constitutional bonds, premium bonds, and all bonds then outstanding and not retired, as aforesaid.

(*b.*) That by section 1 of said act 110 (or 36) of 1890, the city of New Orleans was authorized and empowered to issue bonds to the extent of ten millions of dollars, in order to provide for the retirement of the then outstanding bonded indebtedness of the city of New Orleans and such other indebtedness as under laws then existing was or thereafter became entitled to be funded into any series of bonds, premium bonds excepted, the said bonds to be so issued for such purpose to be known as constitutional bonds of the city of New Orleans.

The said bonds were directed to be delivered to your respondent, to be used for the purpose just described, in accordance with the provisions of said act of 1890.

That by section 2 respondent was authorized to sell and dispose of such amounts of said constitutional bonds as might be deemed requisite for the purpose thereafter expressed in said act.

That by section 3 of the said act of 1890 it is prescribed that the funds derived from said bond sales should be immediately
50 deposited to the credit of a special fund called the "bond sales fund," and by said section it was declared that the said fund should be used solely and exclusively for the following purposes:

(*A.*) Retiring by payment all the then outstanding valid bonds of the city of New Orleans, matured or subject to be called, including certificates for bonds issued under the fourth section of act No. 58 of 1882.

(*B.*) Judgments then or thereafter rendered on floating-debt claims, prior to 1879, entitled to be funded under act No. 67 of 1884.

(c.) That by section 7 of said act of 1890 it is made the duty of the council of the city of New Orleans to levy for the year 1892,

and annually thereafter until the principal and interest of said constitutional bonds are fully paid, a special ad valorem tax of one per cent. upon all taxable property in the city of New Orleans.

That by section 8 respondent is directed, beginning with the year 1892, to annually provide for the carrying of the premium bond plan, the payment of the interest upon the said constitutional bonds, and of the interest upon all other then outstanding interest-bearing bonds of the city of New Orleans, and after the year 1925 for the annual sinking fund necessary to call and retire the number of bonds provided in section 9 of the act, which are $50,000.00 annually, from and including the year 1926, until the year 1937, and thereafter $700,000.00 annually, until the whole issue shall have been cancelled and retired; that after making in each year the provisions required by said section 8, and after deducting the expense incurred by respondent, and after paying any deficiency in the interest fund of previous years, it is directed by said section 8 that one-half of the surplus of said tax shall be passed to the credit of a special fund, to be known as the "permanent public improvement fund," to be disposed of as is afterwards provided in the act; the
51 other half of said surplus to be paid over to the school board of the city of New Orleans, in addition to any fund appropriated by said city out of other funds, to be used in the maintenance and support of the public schools in New Orleans.

(*d.*) That by the provisions of section 10 of said act the said permanent public improvement fund shall be used exclusively for the construction of permanent public improvements in the city of New Orleans, such as levees, canals, drainage stations, and the like, all ordinances of the council therefor to be paid out of that fund, only upon approval, however, by respondent.

(*e.*) By section 11 of said act your respondent, as established by act No. 133 of 1880 and as constituted at the adoption of the said act of 1890, was created a body corporate, with right of existence and succession, until January first, 1943, the said section further declaring that nothing in said act of 1890 contained should be construed to affect or change in any manner the duties, powers, and functions of respondent under laws then existing not inconsistent with said act, but that said duties, functions, rights, and powers were confirmed and maintained in all respects.

(*f.*) That the functions, powers, and responsibilities of respondent, as hereinbefore set out and as existing under the laws creating and pertaining to it, are impliedly, if not expressly, recognized and confirmed by article 318 of the constitution of the State of 1898, and are so expressly recognized as of full force and effect by article 314 of said constitution of the State of 1898.

Seventh. That by act No. 114 of the General Assembly of 1896, particularly section 3 thereof, that portion of the funds in the hands of respondent, under the provisions of sections 6 and 10 of act 110 (or 36) of the General Assembly of 1890, accruing to public works, etc,, meaning the one-half of the surplus of the one per cent. tax dedicated to works of permanent public improvement by
52 said sections of the said act of 1890, is dedicated and applied *the* the specific public improvement of draining of the city of

New Orleans substantially in accordance with the plan for such drainage adopted by the council of the said city by ordinance 10091, council series, approved July 10th, 1895; that by section 6 of said act the drainage commission, created by the latter to control and execute the said drainage, is given the power to raise funds for the purpose of said work by the issuance and disposal of its negotiable bonds to an amount not exceeding five millions of dollars, and all moneys and funds dedicated and applied by the said act to the purposes thereof are consecrated to the payment of the principal and interest of said bonds; and your respondent shows that the said one-half of the said surplus of the said one per cent. tax mentioned and described in sections 6 and 10 of said act of 1890 are embraced within such description.

And by section 7 of said act of 1896 all the provisions thereof respecting the dedication and application of funds and moneys will constitute a contract with the holder or holders of the said bonds, the obligation of which shall not be impaired.

That by act No. 63 of the General Assembly of 1898 the said act of 1896 is amended in certain particulars, and the said dedication of the said funds to the payment of the principal and interest of said bonds is repeated by section 7 thereof, which also declares that all the provisions of the act respecting the dedication and application of funds and moneys shall constitute a contract primarily with the holder or holders of said bonds, and also with every person or corporation that may have entered into contracts with the said commission, and the obligation of said contract as to the dedication and application of funds and moneys shall not be impaired, and may be enforced by any holder of said bonds or by any contract creditor of said commission by proper proceedings.

53 Eighth. That there have been issued and are now outstanding and unpaid eight millions nine hundred and ninety-eight thousand five hundred dollars of said 4% constitutional bonds and —— dollars of premium bonds, to carry which, and to execute in other respects the premium-bond plan, the sum of three hundred and fifty-nine thousand nine hundred and forty dollars is annually required; that there are of ordinances passed by the council to provide for sums due upon contracts for permanent public improvements entered into prior to the adoption of said act 114 of 1896, two hundred and nine thousand nine hundred and eighty-five and $\frac{5}{100}$ dollars; of bonds issued by the said drainage commission, five hundred thousand dollars; of obligations resulting from contracts made by said drainage commission, outstanding and unpaid, the sum of —— dollars.

That if any burdens other than those enumerated in the said constitutional amendment of 1892 and the said act No. 110 (or 36) of 1890 be placed upon said one per cent. tax, or made payable out of the same, or upon the funds derived from the sale of said constitutional bonds, there will be caused a corresponding diminution of the surplus of said tax, divided, as aforesaid, between said permanent public improvement fund, dedicated and consecrated, as aforesaid, to the payment of the bonds of said drainage commission, and the

school board of the city of New Orleans, for the support and maintenance of the public schools; that by article 254 of the constitution of 1898 it is expressly provided that the schools of the city of New Orleans shall continue to receive from your respondent the amounts to which they are entitled under the constitutional amendment of 1892; so that if articles 315, 316, and 317 of the constitution of 1898 are valid and constitutional as regards the Constitution of the United States, which is denied, their fair construction is that they were intended to have no effect upon and in no respect
54 diminish the one-half of said surplus given by the amendment of 1892 and the act to carry the same into effect to the school board of the city of New Orleans for the support and maintenance of the public schools.

Ninth. Further answering, respondent shows that in any event, in no sense waiving, but, on the contrary, insisting upon all of the defenses hereinbefore set out, that it was beyond the power and authority of the constitutional convention of 1898 to adopt said article 317 of said constitution; that the adoption thereof was in violation and disregard of the prohibition contained in section 3 of act No. 52 of the General Assembly of 1896, particularly the first paragraph thereof; by which said act, provision was made for the submission to the people of a proposition to hold a convention for the purpose of framing and putting into effect a new constitution, and to fix the powers of said convention: that by said section it is provided that the said convention shall be and was prohibited from enacting, ordaining, or framing any article or ordinance whereby the bonded indebtedness of the State or of any parochial, municipal, levee, or other political corporation should be affected, impaired, or scaled, or the principal or interest thereof remitted, reduced, suspended, or abolished, without the consent of the holders of such bonds or securities.

That said proposition, with all its conditions and limitations, was accepted and approved by a majority of the duly qualified electors of the State, at an election held on the second Tuesday in January, 1898, upon the terms and conditions set out in said act; that there was administered by the chief justice of the State to each delegate of said convention the oath set out in section 4 of said act, to the effect that he would observe and obey the limitation of authority contained in the act under which the convention was assembled; that the sole authority for the assembling of said convention
55 was the said act of 1896, and the approval thereof by a majority of the duly qualified electors of the State, and the taking of the said oath by each delegate, as aforesaid, signified their willingness to be bound by the limitations placed by said act, and a majority of the duly qualified electors of the State; which limitations would, however, have been binding without the administration of said oath.

That article 317 affects and impairs, both in principal and in interest, the 4% constitutional bonds of the city of New Orleans, all other bonds of said city, other than premium bonds, outstanding at the date of the said constitutional amendment of 1892, premium

bonds, bonds issued by the drainage commission, contracts entered into for works of permanent public improvement by the city of New Orleans prior to the adoption of act 114 of 1896, and contracts entered into by the drainage commission for the doing of work, the execution of which was committed to them; that none of the holders of said bonds or contracts, which are indebtednesses or securities in the sense of the second paragraph of section 3 of said act 52 of 1896, gave their consent to the adoption of said article 317, and hence that the same is null and void for a want of power in the said convention to adopt it.

Tenth. Further answering, respondent shows that articles 315, 316, and 317 of the constitution of 1898, if there was power in the constitutional convention to adopt them, which, as aforesaid, is denied, are, and if carried into effect will, impair the obligations of the following contracts:

(*a.*) The contract with the holders of the constitutional bonds of the city of New Orleans created and established by the said constitutional amendment of 1892 and act 110 (or 36) of 1890, which contract is that none of said bonds shall be issued, nor the proceeds of the sales thereof applied, nor any portion of the one per cent.
56 tax thereby provided used for any purpose other than those enumerated in said amendment and act, and the purposes for which the said articles of the constitution provide for the issuance of constitutional bonds are not enumerated in nor authorized by the said constitutional amendment and act, a statement of the number and amounts of said bonds now outstanding and unpaid being herewith filed and marked Exhibit "A."

(*b.*) The holders of outstanding bonds of the city of New Orleans not retired by said constitutional amendment of 1892, other than premium bonds; a detailed statement of which bonds is filed herewith as part hereof and marked Exhibit "B."

(*c.*) The holders of premium bonds outstanding and unpaid; a detailed statement of which is filed herewith as part hereof and marked Exhibit "C."

(*d.*) The contract or vested right in favor of the school board of the city of New Orleans, or the schools, or the school children, or their parents, resulting from the dedication of one-half of the surplus of the said one per cent. tax found in the said constitutional amendment of 1892 and the act of 1890, such portion of said surplus having been held, in Fisher *vs.* Board of School Directors, 48th An., 1077, to be vested right, of such a character as cannot be impaired by legislation, and if such vested right be of such character it is equally beyond impairment by constitutional enactment.

(*e.*) The holder of ordinances of the city of New Orleans directing the payment of sums due under contracts for work of permanent public improvement entered into prior to the adoption of act 114 of 1896, a detailed statement showing the number and amounts of said contracts and the parties thereto being filed herewith as part hereof and marked Exhibit "D."

(*f.*) The holders of bonds issued by the drainage commission and the contractors payable out of said fund; a statement of the amount

of which bonds now outstanding is filed herewith as part
57 hereof and marked Exhibit "E."

That the said articles 315, 316, and 317 of the constitution of 1898, particularly the article last named, are null, void, and of no effect for the reason that they impair the obligation of the said contracts, deprive the owners thereof of their property without due process of law, and deny them the equal protection of the laws; all in violation of section 10, article 1, and the 14th amendment of the Constitution of the United States.

Further answering, respondent shows that by law it is a trustee for the holders of all bonds of the city of New Orleans outstanding and unpaid at the date said constitutional amendment of 1892 went into effect, and which have not been retired under the latter; for all holders of said constitutional bonds; for all contractors of the city of New Orleans entitled to be paid out of the one-half of the surplus of the said one per cent. tax provided by said constitutional amendment of 1892 and the act of 1890; for all contractors of the drainage commission having rights upon the same said fund; for all holders of bonds issued by said drainage commission; for all holders of premium bonds; that it is a trustee of all moneys received by it for the benefit of those who are entitled to it by law; that relators have no right or title of any description to the issue of constitutional bonds in any amount, nor to any portion of the proceeds of the sale thereof, nor to any portion of the one per cent. tax levied and collected and paid over to respondent under said constitutional amendment of 1892 and the act of 1890.

Wherefore respondent prays that the alternative writ of mandamus herein issued be quashed and set aside; that plaintiffs' demand be rejected and their suit dismissed with costs, and for general relief.

(Signed) BRANCH K. MILLER,
Attorney for Respondent.

58 STATE OF LOUISIANA, }
Parish of Orleans. }

Personally appeared Robert M. Walmsley, who, being duly sworn, deposes and says that he is president of The Board of Liquidation of the City Debt, defendant herein; that the facts and allegations in the foregoing answer are true and correct.

(Signed) R. M. WALMSLEY.

Sworn to and subscribed before me this 17th day of November, 1898.

(Signed) W. H'Y ALLEN, *D'y Cl'k.*

59 Statement of the number & amounts of constitutional bonds of the city of New Orleans outstanding and unpaid, marked Exhibit "A," annexed to and made part of answer of Board of Liquidation of the City of New Orleans.

Filed November 17th, 1898.

Board of Liquidation City Debt, City of New Orleans, La.; office, room 10 city hall, New Orleans, La.

Members of the Board.

Walter C. Flower, mayor, city of New Orleans.
P. A. Rabouin, comptroller, city of New Orleans. } *Ex officio.*
Geo. B. Penrose, treasurer, city of New Orleans.

Ed. A. Palfrey, Wm. B. Schmidt, J. C. Morris, W. T. Hardie, W. R. Stauffer, R. M. Walmsley.

Officers of the Board.

R. M. Walmsley, president; Ed. A. Palfrey, vice-president; Branch K. Miller, attorney; T. Wolfe, Jr., secretary; Bernard C. Shields, ass't secretary.

NEW ORLEANS, *July* 11, 1898.

To the hon. the mayor and city council of New Orleans.

GENTLEMEN: In accordance with section 11 of act No. 110 of the legislature of the State of Louisiana, we hand herewith a printed report in detail of the transactions of the Board of Liquidation, City Debt, for the past six months ending June 30, 1898.

Statement A—Detailed bonded debt statement.
Statement B—Detailed statement cash receipts and expenditures.
Statement C—Uncollected interest taxes.
Statement D—List of employés.
Respectfully submitted.

R. M. WALMSLEY, *President.*

T. WOLFE, JR., *Secretary.*

A.

Bonded Debt City of New Orleans, June 30, 1898.

Name.	Amount.	Maturity.	Interest.	Annual interest.
Constitutional	$8,998,500 00	1942, July 1	4 per cent.	$359,940 00
Premium bonds	5,224,900 00	Annually	5 per cent.	
Water works	10,000 00	1899, Jan. 1	5 per cent.	500 00
Carrollton	50 00	1902, Nov. 1	8 per cent.	4 00
Street improvement	10,000 00	1911, Aug. 1	7.30 per cent.	730 00
Gold bonds	117,000 00	1922, July 1	7 per cent.	8,190 00
Eight ⅌ int. only on $45,000 Carrollton Gas Co. bonds				3,600 00
Total bonded debt	$14,360,450 00			$372,964 00
23 years accrued interest at 5 ⅌ on $5,224,900 premium bonds	6,008,635 00			
Total	$20,369,085 00			

Coupons due January and July	$184,067 50
Coupons due February and August	365 00
Coupons due April and October	2,047 50
Coupons due May and November	2 00

T. WOLFE, JR., *Secretary.* R. M. WALMSLEY, *President.*

B.

Board of Liquidation in Account with Cash.

For six months ending June 30, 1898.

1898.					
Jan. 1.	Cash balance, as per official report				$668,077 44
	Dividend New Orleans Water Works Company.				8,835 75
	Constitutional bond tax,	1898	$302,406 24		
	" " "	1897	125,970 82		
	" " "	1896	27,664 26		
	" " "	1895	3,003 43		
	" " "	1894	1,599 80		
	" " "	1893	850 95		
	" " "	1892	818 61		
				462,314 11	
	Premium bond tax,	1891	254 53		
	" " "	1890	258 78		
	" " "	1889	56 04		
	" " "	1888	32 81		
	" " "	1887	145 19		
	" " "	1886	113 80		
	" " "	1885	117 55		
	" " "	1884	104 04		
	" " "	1883	92 33		
	" " "	1882	50 34		
	" " "	1881	49 69		
	" " "	1880	24 81		
	" " "	1879	19 19		
	" " "	1878	45 67		
	" " "	1877	12 61		
	" " "	1876	11 83		
				1,389 21	
	Redemption interest tax,	1891	254 58		
	" " "	1890	258 78		
	" " "	1889	56 08		
	" " "	1888	32 82		
	" " "	1887	145 19		

1898.				
June 30.	Paid public schools			$139,500 00
	" city ordinances for permanent public improvements			138,146 17
	" extended bonds of 1882	$5,000 00		
	" drawn premium bonds	86,460 00		
	" certificate bonds	385 00		
	" judgments	1,211 85		
			93,056 85	
	" constitutional coupons	183,640 00		
	" other bond "	7,632 06		
			191,272 06	
	" premium bond interest	96,302 00		
	" premium bond premiums	20,330 00		
			116,632 00	
	" salaries	4,059 90		
	" office expenses	1,058 59		
	" law charges	2,214 25		
	" city notary	125 00		
	" attorney	7,750 00		
			15,207 74	
	By cash balance			449,750 82

" " " 1886....	113 83	
" " " 1885....	117 57	
" " " 1884....	104 08	
" " " 1883....	66 09	
		1,149 02
Park bond tax of 1891.....	10 24	
" " " 1890.....	10 38	
" " " 1889.....	2 27	
" " " 1888.....	1 34	
" " " 1887.....	5 82	
" " " 1886.....	4 57	
" " " 1885.....	3 20	
		37 82
Taxes of 1878 and previous years.....		1,762 29
		$1,143,565 64

R. M. WALMSLEY, *President.*

T. WOLFE, JR., *Secretary.*

$1,143,565 64

C.

Uncollected Interest Taxes, Ending June 30, 1898.

Premium bond tax, 1891.....	$18,293 01	
" " " 1890.....	55,255 88	
" " " 1889.....	63,520 21	
" " " 1888.....	51,160 34	
" " " 1887.....	60,082 89	
" " " 1886.....	70,090 43	
" " " 1885.....	62,294 88	
" " " 1884.....	54,378 46	
" " " 1883.....	61,175 72	
" " " 1882.....	49,888 97	
" " " 1881.....	36,590 79	
" " " 1880.....	3,423 00	
Amount brought forward.....		$1,192,549 20
Park bond tax, 1891.....	$722 16	
" " " 1890.....	2,203 03	
" " " 1889.....	2,536 44	
" " " 1888.....	2,031 89	
" " " 1887.....	2,397 73	
" " " 1886.....	2,799 49	
" " " 1885.....	1,631 28	
		14,322 02
Constitutional bond tax, 1897.....	149,529 81	
" " " 1896.....	86,074 27	
" " " 1895.....	52,354 63	
" " " 1894.....	38,228 37	

Uncollected Interest Taxes, Ending June 30, 1898—Continued.

Premium boud tax, 1879	24,031 46	
" " " 1878	53,089 95	
" " " 1877	27,771 04	
" " " 1876	24,335 01	
		$715,382 04
Redemption interest tax, 1891	18,288 01	
" " " 1890	55,251 17	
" " " 1889	63,516 41	
" " " 1888	51,158 56	
" " " 1887	60,081 86	
" " " 1886	70,089 46	
" " " 1885	62,294 25	
" " " 1884	54,383 64	
" " " 1883	42,103 80	
		477,167 16
Constitutional bond tax, 1893	39,152 50	
" " " 1892	36,591 35	
		401,930 93
Constitutional bond tax, 1898		1,089,501 59
		$2,698,303 74

R. M. WALMSLEY, *President.*

T. WOLFE, JR., *Secretary.*

D.

List of Employés Board of Liquidation, City Debt, June 30, 1898.

T. Wolfe, Jr., secretary	Per annum,	$3,500
Bernard C. Shields, assistant secretary	"	2,400
Walton Fry, clerk	"	1,800
Geo. W. Lester, watchman	"	240
John Collins, messenger	"	180
Branch K. Miller, attorney	"	1,000
		$9,120

R. M. WALMSLEY, *President.*

T. WOLFE, JR., *Secretary.*

61 Statement (detailed) of outstanding bonds of the city of New Orleans, not retired by constitutional amendment of 1892, other than premium bonds, marked Exhibit "B," annexed to & made part of defendant's answer.

Filed November 17, 1898.

Coupon bonds	$137,050
Annual interest	13,024

Statement (detailed) of premium bonds outstanding & unpaid, marked "C," annexed to & made part of defendant's answer.

Filed November 17, 1898.

Estimated Amount Required to Carry Out Premium-bond Plan, Annually, to Maturity.

1899	$487,500	1913	$627,500
1900	497,500	1914	637,500
1901	507,500	1915	647,500
1902	517,500	1916	657,500
1903	527,500	1917	667,500
1904	537,500	1918	677,500
1905	547,500	1919	687,500
1906	557,500	1920	697,500
1907	567,500	1921	707,500
1908	577,500	1922	717,500
1909	587,500	1923	727,500
1910	597,500	1924	737,500
1911	607,500	1925	747,500
1912	617,500		

Unpaid undrawn premium bonds $5,126,780

Statement showing the number & amounts of contracts & the parties thereto, holders of ordinances of the city of New Orleans
62 directing the payment of sums due under contracts for work of public improvement entered into prior to the adoption of act 114 of 1896, marked Exhibit "D," annexed to & made part of defendant's answer.

Filed November 17, 1898.

Unpaid Ordinances, Public Improvement Fund.

13007	Chas. Spinks & Son, White St.	6	...	162.68
13038	Barber Asp. Pav. Co., Tulane Ave.	382	....	24.86
13084	Jno. McNally, Algiers court-house	9	....	10,395.48
13085	J. L. O'Connor, iron bridge	4	....	6,173.
13119	Manion & Co., artesian well	10	....	650.
13144	Harmon Hoey, Fischer place	2	...	465.25

13155	Barber Asp. Paving Co., Ursulines....	1....	2,676.72
		2....	2,820.22
		3....	2,821.95
13179	....	4....	2,848.87
		5....	2,872.61
		6....	2,833.32
		7....	2,881.43
		8....	2,863.90
		8½...	385.96
		9....	2,828.80
		10....	908.07
		11....	657.51
		12....	671.51
		13....	656.71
		14....	656.71
		15....	658.54
		16....	656.41
		17....	659.01
		18....	659.01
		19....	564.75
		20....	558.36
		21....	657.48
		22....	657.48
63		23....	1,045.95
		24....	1,044.09
		25....	657.66
13179	Barber Asp. Pav. Co., Ursuline St. cert.	26....	657.66
		27....	657.88
		28....	657.88
13190	Chas. Spinks & Son, Esplanade Ave...	1....	5,861.13
		33....	1,067.90
		34....	812.75
		35....	1,335.66
		36....	1,141.85
		37....	226.40
		38....	952.95
		71....	226.03
		72....	186.37
		73....	962.09
		74....	551.49
		75....	289.54
		76....	1,247.07
		77....	1,299.56
		78....	2,177.83
		79....	2,061.98
		80....	2,042.71
		81....	3,260.69
		82....	3,738.34
		83....	1,157.74
		84....	1,202.19
		85....	1,562.74

			86....	369.36
			87....	1,046.77
			88....	969.43
			89....	2,155.36
			90....	897.64
13203	.....		91....	1,029.18
			92....	3,289.95
13204	Reilly Frawley, Metarie Road cert.....		1....	4,742.80
64	13239	Gillette Herzog Co., iron bridge.	2....	6,000.
			1....	4,120.
13256	Chas. Spinks & Son, Esplanade Ave...		93....	241.06
13284	Reilly Frawley, Metarie road.....		2....	3,777.65
13324	Gillette Herzog Co., iron bridge		3....	6,930.
13379	O'Neill & Koch, school-house.....		2....	3,000.
13383	....		1....	3,000.
13431	Chas. Spinks & Son, Basin St.....		32....	3,073.35
			33....	227.39
			54....	2,756.85
			24....	1,502.40
			62....	2,998.31
			75....	5,296.78
			76....	4,805.59
			77....	1,419.19
			78....	4,456.86
13432	Chas. Spinks & Son, Esplanade Ave...		94....	341.77
			95....	435.33
			96....	384.26
13433	O'Neill & Koch, school-house		3....	3,000.
13459	Gillette Herzog Co., iron bridge		2....	5,880.
13520	O'Neill & Koch, school-house		5....	3,000.
13550	M. J. Flynn, St. Bernard circle.....		1....	2,496.26
13552	O'Neill & Koch, school-house		4....	3,000.
13553	F. Hoffman, " "		5....	6,151.
13600	O'Neill & Koch, " "		6....	3,000.
13628	F. Hoffman, " "		6....	1,369.80
13714	Chas. Spinks & Son, Kerlerec St.		1....	1,822.
			2....	2,337.82
13743	....		31....	1,143.99
			32....	2,652.68
13743	Chas. Spinks & Son, Kerlerec St.....		33....	2,711.25
			64....	1,697.16
				787.66†
			65....	[878.66]*
13856	O'Neill & Koch, school-house		7....	2,912.
	13860	Chas. Spinks & Son, Kerlerec St.	87....	305.42

[* Words and figures enclosed in brackets erased in copy.]
[† In pencil in copy.]

65	13896	Gillette Herzog Co., bridge.....	3....	300.
	14033	O'Neill & Koch, school-house...	8....	5,263.
14324		E. O. Grassed, judg't filling Poland St..	....	475.
				209,985.05†

O K.

(Signed) W. S. DOUGLAS, *Compt.*,
Per F. C. FONT.

14 Nov., '98. W. C.

Statement showing the amount of bonds & contracts outstanding & the holders thereof, issued by the drainage commission, marked Exhibit "E," annexed to and made part of defendant's answer.

Filed November 17, 1898.

Memorandum of Uncompleted Contracts Held by the Drainage Commission.

NEW ORLEANS, *November* 14*th*, 1898.

National Contracting Company:

Estimated cost of present contract	$1,768,428.00
Paid on ac.....	734,300.71
Unpaid.....	$1,034,127.29

F. B. Camors:

Extension of Jourdan Ave. system, Lafayette Ave., Florida walk, & Condensing basin.....	20,000.00
Paid on ac.....	9,060.87
Unpaid.....	10,939.13

E. A. Grasser:

Seventeenth Street canal...	46,140.70
Paid on ac.	44,840.70
Unpaid.....	1,300.00

W. Golding:

Repairs to Bienville station	600.00
Paid on ac.	575.00
66 Unpaid....	25.00

E. A. Grasser:

Claiborne St. canal.....	3,481.50
Unpaid....	3,481.50

[† In pencil in copy.]

Tulane university:

Testing cement	2,500.00
Paid on ac.	825.00
Unpaid	1,675.00

Drainage bonds, $500,000.

Answer of Defendant to Intervention of Drainage Commission of the City of New Orleans.

Filed November 17, 1898.

Civil District Court, Div. —.

STATE *ex Rel.* MISS L. B. WILDER ET AL.
vs.
BOARD OF LIQUIDATION OF THE CITY DEBT. } No. 57806.

Now comes The Board of Liquidation of the City Debt, defendant herein, and for answer to the petition of intervenor it admits the facts stated therein and submits the issues raised by said intervention to the judgment of the court.

Wherefore defendant prays to be hence dismissed with costs and for general relief.

(Signed) BRANCH K. MILLER,
Attorney for Def'd't.

Continued.

Extract from the Minutes of Division D.

THURSDAY, *November* 17, 1898.

Present: Honorable N. H. Rightor, judge.

Civil District Court, Division D.

STATE *ex Rel.* MISS L. B. WILDER ET AL.
vs.
BOARD OF LIQUIDATION OF THE CITY DEBT. } No. 57806.

This case was ordered continued to Tuesday, Nov. 22d,
67 1898, at 11 o'clock a. m.

Answer of Relator to Intervention of Drainage Commission of the City of New Orleans.

Filed November 22, 1898.

Civil Dist. Court, Ph. of Orleans, Division D.

STATE *ex Rel.* MISS L. B. WILDER ET AL.
vs.
THE BOARD OF LIQUIDATION OF THE CITY DEBT; DRAINAGE COMMISSION, Intervenor. } No. 57806.

Now come the relators, Miss L. B. Wilder and others, by their undersigned counsel, and for answer to the petition of intervention of the Drainage Commission herein filed, they deny each and every allegation contained in said petition of intervention, and deny specially that the intervenor has any interest herein.

Wherefore relators pray that said petition of intervention be dismissed at intervenor's cost.

And for general relief, &c.

(Signed) ARTHUR McGUIRK,
CHAS. J. THEARD, *Att'ys.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

STATE OF LA. *ex Rel.* MISS L. B. WILDER ET AL.
vs.
BOARD OF LIQUIDATION OF CITY DEBT & BOARD of Drainage Commissioners, Intervenors. } No. 57806. Division "D."

Testimony on Behalf of Relators, Taken in Open Court on the 22nd Day of November, 1898, before the Honorable N. H. Rightor, Judge.

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Reporter's fee, $20.00.

(Signed) O. M. TENNISON,
Shorthand Reporter.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

STATE OF LA. *ex Rel.* MISS L. B. WILDER ET AL.
vs.
BOARD OF LIQUIDATION OF CITY DEBT & BOARD OF Drainage Commissioners, Intervenors.
No. 57806. Div. "D."

Testimony on Behalf of Relators, Taken in Open Court on the 22nd Day of November, 1898, before the Honorable N. H. Rightor, Judge.

Present: Charles J. Theard and Arthur McGuirk, for relators; Branch K. Miller, for respondent; W. W. Howe, for intervenors, respondents.

Counsel for relator- produces, offers, and files in evidence duly certified copies of ordinances 14477, 14591, & 14675, all three of council series.

Also twenty-five (25) certificates of indebtedness in favor of Miss L. B. Wilder, one of the relators herein, and others. It being admitted by the Board of Liquidators and by the Board of Drainage Commissioners that all the other relators herein hold certificates similar in every respect, except as to the amount of each claim and the number of each certificate, said certificates now offered, as well as the other certificates, the production of which is dispensed with, being the certificates described in the petition herein and
69 issued under the ordinances just offered in evidence, amounting, in the aggregate, to the sum of $115,558.33, as stated in the ordinance of the city council.

Counsel for relators produces, offers, and files in evidence the list made part of ordinance No. 14591, C. S., which is annexed to and made part of the petition for mandamus herein.

JOHN W. WATSON sworn for relator-.

Examination-in-chief by Mr. THEARD:

Q. Mr. Watson, what is your position in the city treasurer's office?

A. I am chief clerk there.

Q. I asked you some time ago to prepare for me a memorandum showing for the last three or four years what was the assessed value of property in the city of New Orleans upon which taxes were collected by the city. Have you prepared that statement?

A. I have.

Q. Will you refer to it and give us the figures?

A. Omitting the hundreds, the assessment in 1898 as shown in the comptroller's office was $139,190,000. In 1896 it was $140,823,000, and in 1895 it was $140,567,000. There is a slight difference between the original figures of the board of assessors and the figures in the comptroller's office. I have taken the figures from the comptroller's office because those are the ones from which the tax bills of the city are made out.

Q. Those are the figures after all reductions of assessments have been made?

A. Yes, and the difference is trifling.

Q. What is the tax which the city of New Orleans imposes upon taxable property?

70 A. Twenty mills (20) or two cents (2) on the dollar.

Q. According to the figures you have just stated?

A. Yes.

Q. Out of those twenty mills how much does the city keep for herself for alimony?

A. Ten mills.

Q. That is one-half of the tax collected?

A. Yes.

Q. To whom does the other half go?

A. To the board of liquidation.

Q. Does the board of liquidation itself collect any money from the tax-payers, or does the city collect it and turn it over to the board of liquidation after its collection—the ten mills or one per cent. coming to the board?

A. The city of New Orleans collects the entire tax and turns over the one per cent. to the board of liquidation.

Q. With the collection of the tax itself the board of liquidators has nothing to do?

A. No.

Q. How does the board get their share of the total tax collected?

A. It gets it from the city comptroller, who pays to them one-half on the collection.

Q. In other words, I understand that if the city collects today fifty thousand dollars of taxes, it would turn over tomorrow or the next day twenty-five thousand dollars to the board of liquidators?

A. That is correct.

Q. The board of liquidators never collects any tax itself from the tax-payer?

A. No.

Q. Can it be stated accurately how much the tax will be that is collected by the city from year to year?

A. You mean how much percentage is collected on the assessment?

Q. That is what I want to find out.

71 A. You will get a very close approximation, and you can find out how much was collected each year up to a given date.

Q. Is the amount of tax due by the tax-payers and collected from year to year subject to variation or is it a fixed amount?

A. The amount to be collected depends upon the amount of the assessment.

Q. In other words, the assessment makes more or less from year to year?

A. Yes.

Q. And correspondingly the amount of tax would be greater or less?

A. Yes.

Q. Then there is an element of uncertainty as to what the ultimate result would be and the percentage of collections actually made?

A. Yes.

Cross-examined by Mr. MILLER:

Q. To what use is the money put collected by the city for taxes?

A. One-half of the amount is used for alimony of the city and the other half to pay the interest and principal of the bonded debt.

Q. The one-half of the taxes collected to pay the interest and principal on the bonded debt is turned over to the board of liquidators?

A. Yes.

Q. That is done under act of 1890?

A. That is done under the law, the act of 1890, and the acts before that.

Q. It is within your knowledge that one-half of the tax collected is paid over to the board of liquidators for the bonded debt?

A. Yes, under statutory law.

Q. The one per cent. that goes for alimony of the city and the one per cent. that goes to pay the interest and principal on the bonded debt are entirely distinct from each other?

A. Yes. They are on the same tax bill, but the bill states
72 on its face what is for alimony of the city and what is for interest on the bonded debt.

Q. You make a difference between those two taxes?

A. We do in this way: We enter the total amount collected, and then pay one-half to the board of liquidators, making the entry the same day, and turn over the money to the board of liquidators the next morning.

R. L. WALMSLEY sworn for relators.

Examinotion-in-chief by Mr. THEARD:

Q. Mr. Walmsley, you are president of the Board of Liquidation of the City Debt, are you not?

A. Yes.

Q. How long have you been president of that board?

A. I suppose about thirteen years, I think.

Q. You are also president of the Board of Drainage Commissioners, the corporation which has intervened here?

A. Yes.

Q. Will you tell us *whatever* the charges that you have to provide for under the act of 1890 are fixed charges or charges that vary from year to year?

A. You mean the things that we have to provide for?

Q. Yes.

A. They are fixed under the law, the amount that we have to provide for. We have to provide for carrying out the premium-

bond plan, and that amount varies from year to year. And then we have to provide for the interest on the bonded debt.

Q. That is fixed only in so far as the total number of bonds outstanding may remain the same from year to year?

A. Yes.

Q. What is the total amount of city four per cent. bonds issued up to the present time?

73 By referring to memorandum, I can give you the exact amount. According to the published statement of the board of liquidators the total amount is $8,998,500.

Q. How much is that less than the total amount of those bonds authorized to be issued?

A. $1,001,500.

Q. The full amount of bonds authorized to be issued was never issued up to the present time?

A. No.

Q. Do the charges and general expenses of the board of liquidators vary from year to year?

A. I have already stated that they vary on account of the allotment of the premium bonds and the distribution of premiums.

Q. Then the surplus which is divided, one-half to the school fund and one-half to the drainage commissioners, necessarily varies from year to year?

A. Of course.

Q. And it has always varied?

A. Certainly.

Q. It is not a fixed sum of money?

A. It is not, and it cannot be ascertained exactly.

Cross-examined by Mr. MILLER:

Q. The amount which is required to carry on the premium-bond plan, does that increase or diminish as time goes on?

A. It increases.

Q. The burden in regard to that is more this year than last year?

A. It would be more if the allotment of premium bonds was equal. You must understand that the city owns a certain proportion of premium bonds which was never issued. If the distribution of premiums were equal to the public and to the city, the amount required would be greater from year to year. But inasmuch as we never know what part will go to the city and what part will

74 go to the public, we do not know whether we gain or lose; it might be very extensive one year, and very little another.

Q. Are there now outstanding, nearing maturity, any class of bonds that, under the act of 1890, are to be retired?

A. Yes.

Q. What are those bonds generally known as—by what name are they known?

A. I can give to you data from the list that I have here: "Waterworks bonds, ten thousand dollars;" "Carrollton bonds, fifty dol-

lars; improvement bonds, ten thousand dollars; gold bonds, one hundred and seventeen thousand dollars;" total amount, one hundred and thirty-seven thousand and fifty dollars ($137,050).

Q. Those bonds, at their maturity, will have to be provided for by the sale of property or other bonds?

A. Yes; as contemplated in that act.

Q. And it therefore reduces in that way the difference between the amount of constitutional bonds now issued and the total amount of ten millions that can be issued?

A. Yes.

Q. The maturities of those bonds are stated in the report of the board of liquidators of last July, which is marked "Exhibit A" and filed with the answer?

A. Yes.

Counsel for respondent offers, produces, and files in evidence the exhibit marked "A," filed with the answer herein.

Cross-examined by Mr. HOWE:

Q. Mr. Walmsley, you are president also of the Board of Drainage Commissioners of New Orleans?

A. Yes, sir.

Q. Have you been so since its organization?

A. Yes.

Q. Do you remember about what time in 1896 it was organized under act No. 114 of 1896?

A. On the 15th of July or August of that year?

Q. It was organized some time between July, 1896, and January, 1897?

75 A. Yes.

Q. You remember that under the third section of that act certain funds were dedicated to that board, consisting first of a certain portion coming from the fund dedicated to public improvements, and secondly from funds realized by the sale of certain railroad franchises by the city?

A. Yes.

Q. Can you state to the court about how much of those funds have up to the present date been turned over to and come into the possession of the board of drainage commissioners?

A. We have received only the amount turned over to us from the city for the sale of railroad franchises. We have received nothing from the funds dedicated to public improvements.

Q. The amount which the drainage commissioners have received up to the present time is about five hundred and eighty thousand dollars ($580,000)?

A. Yes.

Q. That was received from the sale of railroad franchises?

A. Yes.

Q. You have not received anything yet from the public improvement fund, under that act No. 114 of 1896?

A. No.

Q. I call your attention to the fact that, under act No. 114 of 1896, the portion of the public improvement fund coming to the drainage commissioners is only to come to them after January the first, 1898. Do you remember that?

A. I think that is the date.

Q. Now, when for the first time do you expect to get anything from that public improvement fund?

A. From the tax levied for 1899, which is paid next October.

Q. Up to this time, and probably up to next October, you have not and will not receive anything under this act from the
76 public improvement fund?

A. No.

Q. And you don't expect to get anything out of that fund until about next October?

A. That is right.

Q. You remember, as president of the board of drainage commissioners, executing several contracts during the year 1897?

A. Yes.

Q. Do you remember specially the largest one, the one to the National Contracting Company, amounting to about seventeen thousand dollars, in round numbers?

A. Yes.

Q. Can you state whether or not those contracts are cash contracts, whether they have to be paid in cash from time to time?

A. Yes; cash is paid them from time to time on the furnishing of the engineer's certificate.

Q. As soon as a certain portion of work is done you pay the National Contracting Company and the other contractors on the engineer's certificate?

A. Yes.

Q. Now, calling your attention to the fact that these contracts were advertised under the law in the spring of 1897, or say as late as the month of June, 1897, and there being in sight at that time and for a long time thereafter only the sum of five hundred and eighty thousand dollars, what was the understanding of the commissioners and the city as to how the board of drainage commissioners would supply the fund necessary to meet the contracts amounting to nineteen hundred thousand dollars?

A. It was understood by the board, and also by the contractors, that the board would issue bonds and raise money on the bonds.

Q. The board had then received, on account of the railroad franchises sold, the sum of five hundred and eighty thousand dollars?

A. Yes.

77 Q. If I remember rightly, the bonds issued by the drainage commissioners were got ready in the summer of 1897?

A. Yes.

Q. Bearing date November the first, 1897?

A. Yes.

Q. How many of them have been sold?

A. Probably five hundred of those bonds have been sold.

Q. Will you tell the court when those bonds were advertised and sold under the law?

A. About last June.

Q. Were they sold at par or at a premium?

A. They were sold at a slight premium; some at a small premium and some at par, with accrued interest.

Q. The treasurer of the board has furnished a statement on the subject of premiums realized by the sale of those bonds, showing that the total amount realized was $505,238?

A. I suppose that is correct.

Q. I suppose that, as president of the board of liquidators, you are familiar with all these matters?

A. Yes.

Q. Suppose that the demands of the relators herein were allowed, and the board of liquidators was ordered to issue a hundred and fifteen thousand dollars of four per cent. constitutional bonds, under the act of 1890, what, as a matter of mathematics, would be required to pay the interest on those hundred and fifteen thousand dollars of bonds?

A. About forty-six hundred dollars annually.

Q. Now, what effect would that immediately have upon the surplus coming under the act of 1890 to the permanent public improvement fund?

A. It would reduce it by half that amount—that is, by twenty-three hundred dollars.

Q. Suppose that under article 254 of the constitution of
78 1898, to which I now call your attention (reading article 254 of the constitution)—suppose that the school fund of the city was to be protected, as stated in the article, what would be the result of the surplus, if any, to the public improvement fund?

Counsel for relator- objects to this question on the ground that it is irrelevant and is a question of law.

A. As I stated, Mr. Howe, that part of the fund would have to pay the teachers.

Q. The drainage fund would be impaired to the extent of forty-six hundred dollars per annum?

A. Yes, during the life of the bond, about forty-five years.

Q. That would be about two hundred thousand dollars?

A. About that.

Q. You have had a long experience as a financier. Can you tell the court whether or not the funds dedicated to the drainage work are absolutely necessary to meet the contracts that you have made?

A. They are absolutely necessary.

Q. There is no personal liability on the part of the members of the board?

A. Certainly not.

Q. And there is no liability on the part of the city?

A. No.

Q. So that, to meet your contracts now outstanding, you have the

funds dedicated by the three sections of the act of 1890, consisting, first, of the sale of franchises which has already given five hundred and eighty thousand dollars, and what is coming to you in the future from the public improvement fund and nothing else?

A. Nothing else.

Q. And you think, as a financier, that all that is absolutely necessary to meet your obligations?

A. Absolutely necessary. In fact, when the bonds were pre-
79 pared the amount we could realize upon them was entirely inadequate for our purposes, and we went before the legislature and asked them to reduce the amount of these bonds from five millions to a million and a half.

Q. That was done by an act of the legislature of 1898?

A. Yes.

(By Mr. MILLER:)

Q. Why is it that the drainage commissioners have not received any portion of the public improvement fund?

A. Simply because the city council had made contracts for paving and other purposes, to meet which the amount of the public improvement fund received would be required up to January, 1899.

Q. Those ordinances of the city council were passed prior to the adoption of the drainage act?

A. Yes.

Q. They were to be paid all out of the premium of the public improvement fund.

A. Yes, sir; under sections 6 & 10 of article 1890.

Q. The board of liquidators construed the drainage act changing the dedication of that fund to take effect only after the contracts that had been previously made payable out of that fund had been satisfied?

A. That is correct.

Q. Is that fund now being used by the city to pay contracts made before the drainage commissioners' act was passed?

A. Yes.

Q. The original amount of bonds to be issued to pay the drainage commissioners was five millions of dollars?

A. Yes.

Q. And behind that bond issue, and to support the bonds, was this five hundred and eighty thousand dollars received from railroad franchises and one-half of the surplus of the public improvement fund to be received hereafter?

A. Yes.

Q. Now, was that fund thus obtained sufficient for five millions of bonds to acquire financial credit?

80 A. No; I don't think we could have sold the bonds at par if we had issued five millions.

Q. The situation was this, that the law prohibited you from selling the bonds for less than par and accrued interest?

A. Yes.

Q. With the means provided to pay the interest on those bonds they do not command that price?

A. They would not have to command that price if we had contemplated to issue five millions of bonds.

Q. Then what was done by the drainage commissioners?

A. We went before the legislature to have the act amended so as to issue only a million and a half of bonds.

Q. And the bonds were then salable?

A. Yes.

Q. Now, suppose it was established, as a principle, that the surplus which stands behind these bonds could be interfered with, what effect would that have upon the credit and the market position of those bonds?

A. I think it would have a disastrous effect.

Q. You are at the head of a large financial institution in this city?

A. Yes.

Q. Your experience as a financier has been quite extensive?

A. Well, yes.

Q. You are president of the Louisiana national bank?

A. Yes.

Q. Now, coming back to the question Judge Howe asked you, I desire to have it in a little different shape. If effect was given to article 254 of the constitution and the school half of the fund was to remain intact that would throw the whole burden on that portion dedicated to the drainage fund?

A. Yes.

Re-examined by Mr. THEARD:

Q. The converse is equally true if these one hundred and
81 fifteen thousand dollars of bonds were issued and the amount necessary to pay interest on them was charged against the school-board half of the fund, then there would be nothing charged against the half coming to the drainage commissioners?

A. No.

Q. Suppose it was all charged against the school board, then the drainage commissioners would lose nothing at all?

A. Certainly not.

Q. You have told us that this surplus revenue, to be divided between the school board and the drainage commissioners, varies from year to year, and is not a fixed amount?

A. That is correct.

Q. Anything might augment or increase it, such as the amount of the assessment, of stationery bills, attorney's fees, and any charges in your office?

A. Yes.

Q. It is a shifting and varying amount, and not a fixed sum?

A. It is no fixed sum.

Q. What is the surplus this year, can you tell us?

A. I think the whole surplus this year is four hundred and fifty thousand dollars.

Q. One-half of which should come to the drainage commissioners whenever you begin to realize from that fund?

A. Yes; and the other half to the school board.

Q. You say that fund at the present time amounts to four hundred and fifty thousand dollars?

A. Yes; say between the last twelve months.

Q. That is not the only source of revenue of the drainage commissioners?

A. The only two sources of revenue that we have is, first, the franchise money turned over to the commissioners by the city,
82 and any franchise that may be sold hereafter, and one-half of the surplus improvement fund.

Q. You have received from the sale of each franchise the sum of five hundred and eight thousand dollars?

A. About that.

Q. The act says that if any other money should be derived from the sale of street-railroad franchises or for franchises hereafter, then that shall be turned over to the board of drainage commissioners also. That is also a source of revenue, is it not?

A. But it is absolutely uncertain; we have received nothing from it until this day.

Q. Except that five hundred and eighty thousand dollars?

A. Yes.

Q. You have received nothing else, but you might receive a large sum?

A. We might.

Q. So that is also a source of revenue of the drainage commissioners?

A. Yes.

Q. And it is on those two shifting sources of revenue that the bond issue was made and the drainage commissioners has been made, is it not?

A. Yes.

Q. Do you know how many of those bonds have been actually put in circulation?

A. Five hundred.

Q. They were issued and put in circulation at par or above par?

A. Yes.

Q. You said a while ago that you were at the head of a large financial institution in this city, and that any legislation purporting to interfere with the existing sources of revenue of the drainage commissioners would result disastrously to these bonds?

A. Yes.

83 Q. Do you know how much they are quoted on the market?

A. About 103½. I find that on yesterday at the stock exchange 103 was bid and 105 was asked by the holders. That is the quotation today.

Q. That is an advance?

A. Yes.

Q. The bonds have advanced in value?

A. Yes; there is a slight advance over the price at which they were issued.

Q. The city bonds have also advanced?

A. Yes.

Q. Do you know what they bid for on the market?

A. I think 107.

Q. Between 107 and 108?

A. Yes.

Q. Do you know, as president of the board of liquidators of the city debt, of any debts to be retired or any obligations to be met, outside of those that you have mentioned, that have come to maturity at the dates you have mentioned?

A. There is a possibility of others.

Q. I mean debts that you recognize.

A. We never recognize any others.

Q. Do you reject all claims until the court passes upon them?

A. We have no authority to recognize debts.

Q. I was about to ask you whether you have funded recently the unpaid ordinances and unpaid judgments due by the city.

A. On the floating debt, you mean?

Q. Yes.

A. Well, what is your question?

Q. Has the board of liquidators funded lately the unpaid ordinances and unpaid judgments due by the city from 1879 to 1895?

A. The city has issued bonds through the board of liquidators for about two hundred thousand dollars. But if you will allow me to explain, the interest on those bonds is provided for from a different fund entirely.

84

Q. Under article 313 of the constitution?

A. I suppose so.

Q. The subject-matter of article 313 of the constitution never came into court, and the board carried out the mandate of the constitution without any limitation?

A. Yes.

Cross-examined by Mr. MILLER:

Q. The floating-debt matter, covered by article 313 of the constitution, did that involve the issuance at all of the present four per cent. bonds?

A. It did not.

Q. Did it not concentrate the issuance of new bonds entirely?

A. Yes.

Q. It never touched the four per cent. constitutional bonds or the one per cent. tax?

A. No. I will state that if provision had not been made to pay the interest on those bonds the board would have resisted the issuance of it.

Q. Is it not within your knowledge that if the constitutional bonds had not been taken care of the issuance of those bonds would have been resisted by the board?

A. Yes, sir.

Q. The protection of those bonds are provided for under different revenues of the city?

A. Yes, sir.

Q. And with that revenue and those taxes the board of liquidators never had anything to do?

A. Certainly.

Q. So that those bonds will be taken care of out of special funds?

A. Yes; out of a portion of the taxes belonging to each year.

(By Mr. HOWE:)

Q. The proceedings in article 313 of the constitution does not concern the fund concerned in this case?

A. Certainly not.

Q. Now, when you were asked by Mr. Theard about the
85 advance in the four per cent. constitutional bonds and the advance of the drainage bonds, do you think that the advance was in consequence of this suit being brought here by this petitioner?

A. No; they advanced because money was getting easier and it is a good investment.

Q. It is a good investment at five per cent. interest?

A. Yes.

Q. Or at four per cent.?

A. Yes; when the bonds are offered as security.

Counsel for intervenors produces, offers, and files in evidence a plan of drainage adopted by the city of New Orleans in 1895 and by the legislature in 1896, being marked "I A."

Also the resolution of the city council, dated July the 10th, 1895, adopting that plan, marked "I B."

Re-examined by Mr. THEARD:

Q. In regard to this matter of the bonds issued some time ago, special bonds issued to retire the floating debt of the city, under article 313 of the constitution, you stated that the fund created by the act 110 of the General Assembly of 1890 has nothing to do with that. Do you mean that?

A. I mean that as far as we have gone it has absolutely nothing to do with it.

Q. What do you mean when saying, "As far as you have gone"?

A. Simply that the bonds are provided for by a fund separate and distinct from the other.

Q. But does not that article of the constitutjon say that the board of liquidators shall, at any time when it may be necessary, sell a sufficient number of constitutional bonds of the city, now unsold and authorized by act 110 of 1890, to provide for the payment of interest on any bonds?

86 A. Yes; that matter came up before the board, and it was understood that that point would be raised and that we would be compelled to resist it.

Q. But only when that point would be reached?

A. Yes.

Q. But have not the bonds been floated on the pledge made by the article of the constitution?

A. In every case where I have been asked the question I have stated that the back taxes would probably pay the interest on those bonds for four or five years, but after that this other question would arise and the interest on those bonds have to be provided for and could not be met unless the city would pay the interest from year to year.

Q. In other words, as far as you were concerned, you issued these bonds with the clear understanding in your own mind that the latter part of this article of the constitution you would never be in favor of obeying?

A. Not unless the supreme court should order us to do so, but, under the law as it is explained to us, we could not do so.

Q. Have those bonds been sold at or above par?

A. A few of them sold slightly above par. They are considered as good bonds against the city. A provision is not made for the payment of interest on them, otherwise I think the city will provide for the interest, so that these bonds stand as fairly good bonds against the city.

Q. Do you believe that if this security was not behind these bonds that those bonds would demand a hundred cents on the dollar?

A. I merely state that in all cases where I have been asked I made that perfectly plain. I outlined the whole thing before the board before issuing the bonds. I still think that the bonds are fairly good bonds, though I do not think that they have the
87 strength of the four per cent. bonds.

Q. Was not this article 313 of the constitution printed in full on the back of each one of these special bonds?

A. I think it was.

(By Mr. MILLER:)

Q. Will the floating-debt bonds mature before or after the four per cent. bonds?

A. After the four per cent. bonds.

Q. So that there can be no competition between the four per cent. bonds and the constitutional bonds?

A. No.

Q. The constitutional bonds would be out of the way when the floating-debt bonds mature?

A. Yes.

Q. As a practical man, what would you consider the possibility of the city allowing the four per cent. bonds to be bought?

A. I suppose as a matter of fact that the city will provide for the payment of the interest.

Q. You say that article 313 is printed on the back of those floating-debt bonds?

A. Yes.

Q. Floating-debt bondholder gets whatever article 313 of the constitution gives him?

A. Yes.

Q. If article 313 of the constitution cannot be enforced, then the bondholder gets nothing under it?

A. No.

Q. Why was article 313 printed on the back of those bonds?

A. To give notice that the bonds were authorized to be issued under that article of the constitution.

Q. Now, the board of liquidators will have nothing to do in the way of resisting anything on account of the issuance of these bonds until the floating-debt bondholders has something to which they are not entitled to?

A. No.

Q. I believe you decided that it was time enough to deal
88 with that question when it arose?

A. Yes.

Q. And that was the sense of the board?

A. Yes.

(Endorsed:) No. 57806. C. D. C., parish of Orleans. State *ex rel.* Miss L. B. Wilder & others *vs.* The Board of Liquidation of the City Debt. Testimony. Filed December 1, '98. P. J. Fourvillon, d'y clerk. (Stamped.)

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

STATE OF LA. *ex Rel.* MISS L. B. WILDER & AL. *vs.* BOARD OF LIQUIDATION OF CITY DEBT OF N. O.; Board of Drainage Commissioners, Intervenors.	# 57806.	Division "D."

Note of evidence on behalf of defendants and intervenors, taken in open court on the 22d day of ——, 1898, before the Honorable N. H. Rightor, judge.

Present: Arthur McGuirk and Charles J. Theard, for relators; Branch K. Miller, for respondents; W. W. Howe, for intervenors.

Counsel for defendants produces, offers, and files in evidence the exhibit marked "A," annexed to and filed with the answer, being a statement of the Board of Liquidators of the City Debt of New Orleans contained in its official report of July 11th, 1898; which statement is admitted to be correct, the same as if verified by the testimony of the president and secretary by whom it is signed.

It is admitted that the amount necessary to meet the annual interest upon the bonds described in said statement other
89 than constitutional bonds is $13,024 per annum, as set out in the exhibit marked "B," filed with the answer.

Counsel for defendants also produces, offers, and files in evidence the exhibit marked "C," filed with the answer, setting

forth the estimated amount required to carry out the premium-bond plan annually to maturity, this to have the same effect as if verified by the testimony of the secretary by whom it is signed.

1. Counsel for defendants also produces, offers, and files in evidence a statement of unpaid ordinances of the city of New Orleans based upon contracts made by the city payable out of the public improvement fund, entered into prior to the adoption of the act #114 of 1896, the same as though verified by the oath of the comptroller of the city of New Orleans by whom the said statement was prepared.

Also statement of contracts made and entered into by the drainage commissioners and the amount of drainage bonds, to wit, 500, said statement to be taken and considered the same as though verified by the oath of the secretary of the drainage commissioners, by whom said statement was prepared.

It is admitted that there was administered to each and every member of the constitutional convention of 1898 the oath prescribed by act # 52 of 1896.

It is admitted that all the bonds mentioned in the Exhibit "A" annexed to the answer, as well as the premium bonds described in Exhibit "C," amounting to $5,126,780, as well as the unpaid ordinances described in Exhibit "D" and the contract bonds described in Exhibit "E," are all outstanding and unpaid.

It is agreed that all evidence offered by defendants shall be presentable on behalf of intervenors, and all evidence offered on behalf of intervenors may be presentable on behalf of defendants, in so far as either may desire of availing themselves of the benefit thereof.

90 Intervenor produces, offers, and files in evidence the testimony of F. P. Mullen, the representative of the National Contracting Company, in the form of a statement which it is agreed may be received as his testimony, the witness not being able to come to the court, said statement being marked "I 13."

Intervenor produces, offers and files in evidence the testimony of F. G. Freret, secretary and treasurer of the drainage commission of New Orleans, marked "I 4," it being received as the evidence of Mr. Freret as if the same had been given in open court under oath.

It is admitted that Mr. Raymond, the engineer of the drainage commission, if put upon the stand, would corroborate the statement of Mr. Mullen, already offered, in regard to the prospective sale of drainage bonds.

Intervenor also produces, offers and files in evidence a copy of one of the drainage bonds, it being stipulated that this copy may stand in lieu of the original, and represent the balance of the half million of such bonds issued.

It is admitted that the Exhibit "I A" heretofore offered in evidence by intervenor in connection with the testimony of Mr. Walmsley is the drainage plan adopted by the city of New Orleans in 1895, and adopted by resolution of the common council of the city on July 10th, 1896, and mentioned in the act of the legislature No. 114 of 1896, said resolution having already been offered in

evidence by intervenor in connection with the testimony of Mr. Walmsley and marked " I B."

It is agreed that the record in the case of The State *vs.* Flower, decided in June, 1897, may be considered in evidence on behalf of intervenors, to be referred to in the printed reports of the Supreme Court.

91 It is agreed and admitted that the claim of relators herein for the years 1882 and 1884, sued upon herein, were voluntarily assumed by the city of New Orleans under authority of the constitutional amendment of 1892, this assumption being prior to the call for the constitutional convention of 1898, and that under this said assumption the city has made provision for the payment of said claim out of her general revenues from taxes collected by her annually.

3. It is further admitted that the city provided for the said claims for the years 1882 and 1884 only by setting aside each year in each budget such an amount as it found it possible to be devoted to the payment of said claim, the annual instalment being from ten to twenty-five thousand dollars.

The evidence is closed.

(Endorsed:) # 57806. Div. " D." Civil district court, parish of Orleans. State *ex rel.* Miss L. B. Wilder & *al. vs.* Board of Liquidation of City Debt; Bd. of Drainage Com., intervenors. Reported by O. M. Tennison, shorthand reporter. Filed November 17, '98. W. H'ry Allen. (Stamped.)

Note of Evidence (Additional) for Intervenors.

Filed November 22, 1898.

Civil District Court, Parish of Orleans.

STATE *ex Rel.* MISS L. B. WILDER ET AL.
vs.
BOARD OF LIQUIDATION OF THE CITY DEBT. } No. 57806.

Additional notes of evidence for intervenor.

Intervenor offers, introduces, and files as of Nov. 22, 1898, and by consent of all parties:

92 1. Three ordinances of the city council of N. O. as follows, marked as follows: " I 5," " I 6," " I 7."

2. Certified copies reports of The Drainage Commission, intervenor, to the mayor & council, as follows, with proceedings of council thereon, marked " I 8," " I 9," " I 10," " I 11."

Ordinance No. 14477, council series, directing the comptroller to issue certificates of indebtedness to the school teachers, by & with the approval of the joint committee on schools & finance, for claims due them for the month of December, 1881, & for the years 1882, 1883, 1884, for unpaid salaries.

Filed November 22, 1898.

Offered in evidence by counsel for relator-.

Ordinances.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *Aug.* 1, 1898.

Calendar No. 981.

No. 14477, council series.

Be it ordained by the council of the city of New Orleans that the comptroller be and he is hereby directed, by and with the approval of the joint committee on schools and finance, to issue to the owners of claims against the school board of the parish of Orleans, for the month of December, 1881, and for the years 1882, 1883, 1884, for unpaid salaries of school teachers and portresses, and other legitimate claims against said school board, now in the hands of the original owners who have in nowise parted with their rights of ownership, or pledged the same, certificates of indebtedness, stating the names of the persons to whom the same shall be issued, the fact that such persons have in nowise parted with their rights of ownership or pledged the same, and the amounts to be paid.
93 Such certificates shall be countersigned by the mayor; provided, that nothing in this ordinance shall be construed as prejudicing the rights of the owners for their claims for the years of 1885, 1886 and 1887.

Adopted by the council of the city of New Orleans July 5th, 1898.

W. R. BRASHEAR,
Clerk of Council.

The veto of the mayor to the contrary notwithstanding.
Adopted by the council of the city of New Orleans July 26th, 1898.

W. R. BRASHEAR,
Clerk of Council.

A true copy.
W. R. BRASHEAR,
Clerk of Council.

Ordinance No. 14591, council series, directing the comptroller to issue certificates of indebtedness to the school teachers for claims due them for the years 1882, 1883, 1884 for unpaid salaries (said claims having been approved by the committees on finance & public schools) in the sum of $115,458.33.

Filed November 22, 1898.

Offered in evidence by counsel for relator.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *September* 12, 1898.

Calendar No. 1174.

No. 14591, council series.

Whereas, by ordinance No. 14477, C. S., adopted July 26th, 1898, the city of New Orleans has assumed payment of the obligations of the board of directors of the public schools, for the unpaid salaries of school teachers and portresses, and other legitimate claims against said board, for the years 1882, 1883 and 1884, and has ordered the issuance of certificates therefor, in accordance with articles 315, 316 and 317 of the constitution of 1898, and

94 Whereas, the said claims have been duly presented within the time prescribed by law, and have been examined and approved by the committees on finance and public schools, of this council, as appears from their detailed statement annexed hereto and made part hereof.

Be it ordained, by the council of the city of New Orleans, That the comptroller be, and he is hereby directed to issue to the owners of claims against the school board for the parish of Orleans, whose names appear upon the statement hereto annexed and made part hereof, which is marked "A," of date August 29, 1898; and signed W. R. Brashear, clerk of council (or to their lawful representatives), certificates of indebtedness (which shall be countersigned by the mayor), for the amounts specified in said statement, as being individually due to each of said claimants, the total amount of all said certificates herein authorized being one hundred and fifteen thousand, four hundred and fifty-eight and $\frac{33}{100}$ dollars ($115,458.33).

Which sum of $115,458.33 is hereby assumed by the city of New Orleans under article 315 of the constitution of 1898.

Be it further ordained, etc., That before any such certificate is issued to any claimant, such claimant shall satisfy the comptroller that he or she is the person named in said certificate and said statement; that he or she was an employee of the school board of the parish of Orleans during the year or years named in said certificate; that he or she has in nowise parted with his or her rights or ownership in, or pledged, said claim.

Adopted by the council of the city of New Orleans, September 6th, 1898.

W. R. BRASHEAR,
Clerk of Council.

Approved September 12, 1898.

A. BRITTIN,
Act'g Mayor.

A true copy.
R. L. TULLIS,
Secretary to the Mayor.

95 Ordinance No. 14675, council series, amending ordinance No. 14591 by striking out the words & figures $115,458.33 & inserting the words & figures $115,558.33.

Filed November 22, 1898.

Offered in evidence by counsel for relator.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *October* 5, 1898.

Calendar No. 1296.

No. 14675, council series.

An ordinance amending and re-enacting ord. 14591, C. S., being an ordinance directing the comptroller to issue certificates of indebtedness to the school teachers for claims due them for the years 1882, 1883, and 1884.

Be it ordained, That ord. 14591, C. S., be and the same is amended as follows: "In lines 39 and 40, strike out the words, one hundred and fifteen thousand, four hundred and fifty-eight and $\frac{33}{100}$ dollars, and the figures ($115,458.33), and insert in lieu thereof the words one hundred and fifteen thousand, five hundred and fifty-eight and $\frac{33}{100}$ dollars, and the figures $115,558.33. In line 41 strike out the figures $115.458.33 and insert in lieu thereof the figures $115,558.33," and be it further ordained that ord. 14591 as so amended be and the same is hereby re-enacted.

Adopted by the council of the city of New Orleans, October 4th, 1898.

W. R. BRASHEAR,
Clerk of Council.

Approved October 5, 1898.

W. C. FLOWER, *Mayor.*

A true copy.
R. L. TULLIS,
Secretary to the Mayor.

96 *Certificates of Indebtedness for Unpaid Salaries in Favor of Miss L. B. Wilder & Others (25 in Number).*

All filed November 22nd, 1898.

Offered in evidence by counsel for relator.

No. 2. *Certificate of Indebtedness.* $718.53.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto J. V. Calhoun in the sum of seven hundred eighteen and $\frac{53}{100}$ dollars for unpaid salary as teacher, Academic, No. 1, for the years 1882, $131.65; 1883, $363.00; 1884, $223.85.

That the said J. V. Calhoun has declared and sworn that he has in nowise parted with his rights of ownership or pledged said claim, and that the said *Mrs. J. R. Dicks* is entitled to the payment of this claim by virtue of the recognition thereof by the council of the city of New Orleans under ordinance 14477, C. S., adopted July 26th, 1898, and in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

No. 3. *Certificate of Indebtedness.* $585.08.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto D. H. Buckley in the sum of five hundred eighty-five and $\frac{8}{100}$ dollars for unpaid salary as teacher, Academic, No. 1, for the years of 1882, $105.08; 1883, $288.00; 1884, $192.00.

That the said D. H. Buckley has declared and sworn that
97 he has in nowise parted with his rights of ownership or pledged said claim, and that the said D. H. Buckley is entitled to the payment of this claim by virtue of the recognition thereof by the council of the city of New Orleans under ordinance 14477, C. S., adopted July 26th, 1898, and in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

No. 4. *Certificate of Indebtedness.* $392.79.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto T. W. Dyer in the sum of three hundred ninety-two $\frac{79}{100}$ dollars for unpaid salary as teacher, Academic, No. 1, for the years of 1882, $104.79; 1883, $288.00.

That the said T. W. Dyer had declared and sworn that he — is nowise parted with his rights of ownership or pledged said claim, and that the said T. W. Dyer is entitled to the payment of this claim by virtue of the recognition thereof by the council of the city of New Orleans under ordinance 14477, C. S., adopted July 26th, 1898, and in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

No. 5. *Certificate of Indebtedness.* $750.95.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

98 This is to certify that the City of New Orleans is indebted unto Mrs. Mary Stamps in the sum of seven hundred fifty and $\frac{95}{100}$ dollars for unpaid salary as teacher, Academic, No. 2, for the years of 1882, $136.80; 1883, $375.00; 1884, $239.15.

That the said Mrs. Mary Stamps has declared and sworn that she in nowise parted with her rights of ownership or pledged said claim, and that the said Mrs. Mary Stamps is entitled to the payment of this claim by virtue of the recognition thereof by the council of the city of New Orleans under ordinance 14477, C. S., adopted July 26th, 1898, and in conformity with articles 216, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

No. 32. *Certificate of Indebtedness.* $211.46.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto Mrs. E. C. Hunter in the sum of two hundred eleven and $\frac{46}{100}$ dol-

lars for unpaid salary as teacher. Paulding, for the years 1882, $38.21; 1883, $105.00; 1884, $68.25.

That the said Mrs. E. C. Hunter has declared and sworn that she has in nowise parted with her rights of ownership or pledged said claim, and that the said Mrs. E. C. Hunter is entitled to the payment of this claim by virtue of the recognition thereof by the council of the city of New Orleans under ordinance 14477, C. S., adopted July 26th, 1898, and in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

99 No. 48. *Certificate of Indebtedness.* $272.30.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto Miss Sallie Harris in the sum of two hundred seventy-two and $\frac{30}{100}$ dollars for unpaid salary as teacher, Webster, for the years of 1882, $49.25; 1883, $135.00; 1884, $88.05.

That the said Miss Sallis Harris has declared and sworn that she has in nowise parted with her rights of ownership or pledged said claim, and that the said Miss Sallie Harris is entitled to the payment of this claim *and* by virtue of the recognition thereof by the council of the city of New Orleans under ordinance 14477, C. S., adopted July 26th, 1898, and in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

No. 136. *Certificate of Indebtedness.* $173.25.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto Miss Rosa Carolan in the sum of one hundred seventy-three and $\frac{25}{100}$ dollars for unpaid salary as teacher, Bayou road, for the years 1883, $105.00; 1884, $68.25.

That the said Miss Rosa Carolan has declared and sworn that she has in nowise parted with her rights of ownership or pledged said claim, and that the said Miss Rosa Carolan is entitled to the payment of this claim by virtue of the recognition thereof by the coun-

cil of the city of New Orleans under ordinance 14477, C. S.,
100 adopted July 26th, 1898, and in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

No. 137. *Certificate of Indebtedness.* $398.54.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto Mrs. Palmyre Cartier in the sum of three hundred ninety-eight and $\frac{54}{100}$ dollars for unpaid salary as teacher, Claiborne, for the years of 1882, $71.84; 1883, $198.00; 1884, $128.70.

That the said Mrs. Palmyre Cartier has declared and sworn that she has in nowise parted with her rights of ownership or pledged said claim, and that the said Mrs. Palmyre Cartier is entitled to the payment of this claim by virtue of the recognition thereof by the council of the city of New Orleans under ordinance 14477, C. S., adopted July 26th, 1898, and in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

No. 141. *Certificate of Indebtedness.* $211.55.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto Miss Gretta Donovan in the sum of two hundred eleven and $\frac{55}{100}$ dollars for unpaid salary as teacher, Claiborne, for the years of 1882, $38.30; 1883, $105.00; 1884, $68.25.

101 That the said Miss Gretta Donovan has declared and sworn that she has in nowise parted with her rights of ownership or pledged said claim, and that the said Miss Gretta Donovan is entitled to the payment of this claim by virtue of the recognition thereof by the council of the city of New Orleans under ordinance 14477, C. S., adopted July 26th, 1898, and in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

No. 160. *Certificate of Indebtedness.* $213.21.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto Miss Sallie Boyce in the sum of two hundred thirteen and $\frac{21}{100}$ dollars for unpaid salary as teacher, St. Philip, for the years 1882, $38.21; 1883, $105.00; 1884, $70.00.

That the said Miss Sallie Boyce has declared and sworn that she has in nowise parted with her rights of ownership or pledged said claim, and that the said Miss Sallie Boyce is entitled to the payment of this claim by virtue of the recognition thereof by the council of the city of New Orleans under ordinance 14477, C. S., adopted July 26th, 1898, and in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

No. 167. *Certificate of Indebtedness.* $395.01.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

102 NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto Mrs. D. R. Miller in the sum of three hundred ninety-five and $\frac{1}{100}$ dollars for unpaid salary as teacher, Barracks, or No. 15, for the years of 1882, $76.41; 1883, $216.00; 1884, $102.60.

That the said Mrs. D. R. Miller has declared and sworn that she has in nowise parted with her rights of ownership or pledged said claim, and that the said Mrs. D. R. Miller is entitled to the payment of this claim by virtue of the recognition thereof by the council of the city of New Orleans under ordinance 14477, C. S., adopted July 26th, 1898, and in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

No. 241. *Certificate of Indebtedness.* $438.81.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto Miss L. B. Wilder in the sum of four hundred thirty-eight and $\frac{81}{100}$

dollars for unpaid salary as teacher, Washington, for the years of 1882, $78.81; 1883, $216.00; 1884, $144.00.

That the said Miss L. B. Wilder has declared and sworn that she has in nowise parted with her rights of ownership or pledged said claim, and that the said Miss L. B. Wilder is entitled to the payment of this claim by virtue of the recognition thereof by the council of the city of New Orleans under ordinance 14477, C. S., adopted July 26th, 1898, and in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

103 No. 242. *Certificate of Indebtedness.* $329.07.

Payable only to the original owner who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto Miss Annie Sheean in the sum of four hundred twenty-nine $\frac{7}{100}$ dollars for unpaid salary as teacher, Washington, for the years 1882, $59.07; 1883, $162.00; 1884, $108.00.

That the said Miss Annie Sheean has declared and sworn that she has in nowise parted with her rights of ownership or pledged said claim, and that the said Miss Annie Sheean is entitled to the payment of this claim by virtue of the recognition thereof by the council of the city of New Orleans under ordinance 14477, C. S., adopted July 26th, 1898, and in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

No. 243. *Certificate of Indebtedness.* $291.27.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto Miss Emma Prados in the sum of two hundred ninety-one and $\frac{27}{100}$ dollars for unpaid salary as teacher, Washington, for the years 1882, $59.07; 1883, $162.00; 1884, $70.20.

That the said Miss Emma Prados has declared and sworn that she has in nowise parted with her rights of ownership or pledged said claim, and that the said Miss Emma Prados is entitled to the payment of this claim by virtue of the recognition thereof by the

council of the city of New Orleans under ordinance 14477'
104 C. S., adopted July 26th, 1898, and in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

No. 280. *Certificate of Indebtedness.* $548.05.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto M. M. Lowe in the sum of five hundred forty-eight and $\frac{5}{100}$ dollars for unpaid salary as teacher, Laurel, for the years of 1882, $93.05; 1883, $255.00; 1884, $200.00.

That the said M. M. Lowe has declared and sworn that he has in nowise parted with his rights of ownership or pledged said claim, and that the said M. M. Lowe is entitled to the payment of this claim by virtue of the recognition thereof by the council of the city of New Orleans under ordinance 14477, C. S., adopted July 26th, 1898, and in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

No. 298. *Certificate of Indebtedness.* $548.05.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto Louis Leche in the sum of five hundred forty-eight and $\frac{5}{100}$ dollars for unpaid salary as teacher, M'Donogh, No. 8, for the years 1882, $93.05; 1883, $255.00; 1884, $200.00.

105 That the said Louis Leche has declared and sworn that he has in nowise parted with his rights of ownership or pledged said claim, and that the said Louis Leche is entitled to the payment of this claim by virtue of the recognition thereof by the council of the city of New Orleans under ordinance 14477, C. S., adopted July 26th, 1898, and in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

No. 300. *Certificate of Indebtedness.* $317.96.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto Miss Nettie Parr in the sum of three hundred seventeen and $\frac{96}{100}$ dollars for unpaid salary as teacher, M'Donogh, No. 8, for the years of 1882, $58.76; 1883, $162.00; 1884, $97.20.

That the said Miss Nettie Parr has declared and sworn that she has in nowise parted with her rights of ownership or pledged said claim, and that the said Miss Nettie Parr is entitled to the payment of this claim by virtue of the recognition thereof by the council of the city of New Orleans under ordinance 14477, C. S., adopted July 26th, 1898, and in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

No. 308. *Certificate of Indebtedness.* $438.81.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

106 NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto Miss M. A. Wickes in the sum of four hundred thirty-eight and $\frac{81}{100}$ dollars for unpaid salary as teacher, Live Oak, for the years of 1882, $78.81; 1883, $216.00; 1884, $144.00.

That the said Miss M. A. Wickes has declared and sworn that she has in nowise parted with her rights of ownership or pledged said claim, and that the said Miss M. A. Wickes is entitled to the payment of this claim by virtue of the recognition thereof by the council of the city of New Orleans under ordinance 14477, C. S., adopted July 26th, 1898, and in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

No. 327. *Certificate of Indebtedness.* $213.30.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto Miss Anna B. Cooke in the sum of two hundred thirteen and $\frac{30}{100}$

dollars for unpaid salary as teacher, Magnolia, for the years 1882, $38.30; 1883, $105.00; 1884, $70.00.

That the said Miss Anna Cooke has declared and sworn that she has in nowise parted with her rights of ownership or pledged said claim, and that the said Miss Anna B. Cooke is entitled to the payment of this claim by virtue of the recognition thereof by the council of the city of New Orleans under ordinance 14477, C. S., adopted July 26th, 1898, and in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

107 No. 338. *Certificate of Indebtedness.* $438.35.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto Mrs. C. S. Reese in the sum of four hundred thirty-eight and $\frac{35}{100}$ dollars for unpaid salary as teacher, Keller (M'D., No. 20), for the years of 1882, $78.35; 1883, $216.00; 1884, $144.00.

That the said Mrs. C. S. Reese has declared and sworn that she has in nowise parted with her rights of ownership or pledged said claim, and that the said Mrs. C. S. Reese is entitled to the payment of this claim by virtue of the recognition thereof by the council of the city of New Orleans under ordinance 14477, C. S., adopted July 26th, 1898, and in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

No. 339. *Certificate of Indebtedness.* $325.47.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto Miss L. C. Whitaker in the sum of three hundred twenty-five and $\frac{47}{100}$ dollars for unpaid salary as teacher, Keller (M'D., No. 20), for the years of 1882, $55.47; 1883, $162.00; 1884, 108.00.

That the said Miss L. C. Whitaker has declared and sworn that she in nowise parted with her rights of ownership or pledged said claim, and that the said Miss L. C. Whitaker is entitled to
108 the payment of this claim by virtue of the recognition thereof by the council of the city of New Orleans under ordinance —,

C. S., adopted July 26th, 1898, and in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

No. 342. *Certificate of Indebtedness.* $270.35.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto Miss A. L. Beecher in the sum of two hundred seventy and $\frac{35}{100}$ dollars for unpaid salary as teacher, Keller (M'D. No. 20), for the years of 1882, $47 60; 1883, $135.00; 1884, $87.75.

That the said Miss A. L. Beecher has declared and sworn that she has in nowise parted with her rights of ownership or pledged said claim, and that the said Miss A. L. Beecher is entitled to the payment of this claim by virtue of the recognition thereof by the council of the city of New Orleans under ordinance 14477, C. S., adopted July 26th, 1898, in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

No. 346. *Certificate of Indebtedness.* $211.55.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted
109 unto Miss Elise Hunter in the sum of two hundred eleven and $\frac{55}{100}$ dollars for unpaid salary as teacher, Keller (M'D., No. 20), for the years 1882, $38.30; 1883, $105.00; 1884, $68.25.

That the said Miss Elise Hunter has declared and sworn that she has in nowise parted with her rights of ownership or pledged said claim, and that the said Miss Elise Hunter is entitled to the payment of this claim by virtue of the recognition thereof by the council of the city of New Orleans under ordinance 14477, C. S., adopted July 26th, 1898, in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

No. 371. *Certificate of Indebtedness.* $326.37.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto Mrs. A. E. Chase in the sum of three hundred twenty-six and $\frac{37}{100}$ dollars for unpaid salary as teacher, M'Donogh, No. 4, girls, for the years of 1882, $59.07; 1883, $162.00; 1884, 105.30.

That the said Mrs. A. E. Chase has declared and sworn that she has in nowise parted with her rights of ownership or pledged said claim, and that the said Mrs. A. E. Chase is entitled to the payment of this claim by virtue of the recognition thereof by the council of the city of New Orleans under ordinance 14477, C. S., adopted July 26th, 1898, in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

110 No. 421. *Certificate of Indebtedness.* $402.23.

Payable only to the original owner, who has in nowise parted with his or her rights of ownership or pledged the same.

NEW ORLEANS, *Oct. 7th*, 1898.

This is to certify that the City of New Orleans is indebted unto Mrs. J. R. Dicks in the sum of four hundred two and $\frac{23}{100}$ dollars for unpaid salary as teacher, Short street, for the years 1882, $72.23; 1883, $198.00; 1884, $132.00.

That the said Mrs. J. R. Dicks has declared and sworn that she has in nowise parted with her right of ownership or pledged said claim, and that the said Mrs. J. R. Dicks is entitled to the payment of this claim by virtue of the recognition thereof by the council of the city of New Orleans under ordinance 14477, C. S., adopted July 26th, 1898, and in conformity with articles 315, 316, and 317 of the constitution of 1898.

(Signed) W. S. DOUGLAS,
Comptroller.

(Signed) A. BRITTIN,
Act'g Mayor.

Testimony of F. P. Mullan, Representative of the National Contracting Company, in the Form of a Statement, Marked "1 3."

Filed November 22, 1898.

Offered in evidence by counsel for intervenors.

Testimony of F. P. Mullan.

Civil District Court, D.

111 STATE *ex Rel.*, ETC., *vs.* BOARD OF LIQUIDATION, ETC. } No. 57806.

It is agreed that in the absence of Mr. F. P. Mullan, witness for intervenor, The Drainage Commission of New Orleans, the following is what he would state as a witness, and that it may be offered and received as such:

"I represent the National Contracting Company on its contract with the Drainage Commission of N. O. of Aug. 9, 1897. At the time we made our bids and took our contract it was understood that the cash assets of the commission derived from section 3 of act 114 of 1896 would be only about $580,000, and that in order to meet the payments to us the drainage commission would issue and sell its bonds under the act of 1896."

Testimony of F. G. Freret, Secretary and Treasurer of the Drainage Commission of New Orleans, Marked "1 4."

Filed November 22, 1898.

Offered in evidence by counsel for intervenors.

Testimony of F. G. Freret, secretary and treasurer of Drainage Comm. of N. O.

The following is a statement of bonds prepared, engraved, and provided under act No. 114 of 1896 by the Drainage Commission of New Orleans and of bonds advertised, sold, and now outstanding:

112 There were prepared, engraved, and provided of the bonds above mentioned by January, 1898..... ..... $1,500,000

These bonds are of $1,000 each, bearing date Nov. 1, 1897, having forty years to run, and bearing interest at the rate of 5 per cent. per annum, payable semi-annually, May and November, and having interest coupons attached.

Of these bonds there were advertised and sold on the 21st of June, 1898, 500 bonds.	500,000
The premium realized was	5,238
Making the amount realized	$505,238.00

These bonds were delivered to the purchasers on the 29th and 30th of June, 1898, the purchasers paying for them the said amount of $505,238.00, and are now outstanding.

Contracts were entered into by the drainage commission before May 12th, 1898, with—

E. F. Grasser, May 19th, 1897	$46,140.70
National Contracting Co., Aug. 9th, 1897	1,768,428.00
Tulane university, Decem., 1897	2,500.00
J. J. Keegan, Ap'l 2nd, 1898	7,341.98
F. B. Camors, Ap'l 22nd, 1898	10,054.67
	$1,834,465.35

On the above contracts there had been paid on May 12th, '98, as follows:

National Contracting Co.	$269,165.67	
E. A. Grasser	44,240.70	
J. J. Keegan	4,147.68	
		$317,552.05

113 On the above contracts there has been paid between May 12 and Nov. 14 as follows:

National Contracting Co.	$465,137.04	
E. A. Grasser	600.00	
J. J. Keegan	3,194.30	
F. B. Camors	10,054.67	
		479,811.01
Total payments on the above contracts		797,363.06
Amount unpaid on above contracts		$1,037,102.29

Foregoing contracts were all for work in connection with the drainage act of 1896, and are expected to be completed by Aug., 1899.

During the time that the contracts were advertised from March to June, 1897, it was matter of public knowledge that the Drainage Commission of New Orleans would be obliged to sell bonds under act 114 of 1896 in order to meet the payments under the said contracts, and would sell the same for such purpose.

Some of the proposed bidders were specially notified in reply to enquiries. The matter was repeatedly discussed at meetings of the commission which were public and at which bidders were present.

There was no concealment that the cash funds of the commission were only a small part of what would be needed to meet the proposed contracts. In May, 1897, the question was discussed of calling for alternative bids in one-third cash and two-thirds bonds, but it was concluded it would be more regular to sell the bonds and pay all cash.

The cash received by the drainage commission from its beginning from the sources named in section 3 of act 114 of 1896 to the present time amounts to $579,582.12. This, I understand, to be from railroad franchises. Nothing has yet been received from the operations of act 110 of 1890.

114 Drainage bond (copy) to stand in lieu of the original & represent the balance of the half million of such bonds issued, marked "1 5."

Filed November 22, 1898.

Offered in evidence by counsel for intervenor.

Copy of bond of the Drainage Commission of New Orleans offered, introduced, and filed by intervenor, it being agreed that it shall be received as a sample of the issue of $500,000 mentioned in the testimony.

$1,000. $1,000.

The Drainage Commission of New Orleans, La.

For value received the Drainage Commission of New Orleans, Louisiana, a board organized by and under act No. 114 of the General Assembly of the State of Louisiana, approved July 9th, 1896, acknowledges itself indebted to and promises to pay to bearer one thousand dollars in lawful money of the United States of America on the first day of November, 1937, with interest at the rate of five per cent. per annum, payable in like lawful money on the first days of November and May in each year, upon presentation and surrender of the annexed coupons as they severally become due until said principal sum shall be paid, the principal and interest being payable at the Louisiana national bank, in the city of New Orleans. This bond is one of an issue authorized by the said act No. 114 of 1896, the said issue not to exceed five million dollars in total amount, and all money and funds dedicated and applied by the said act to the purposes thereof are consecrated to the payment of the principal and interest of all of said bonds, and they are payable from said moneys and funds as well as any other funds provided for the purpose, and the said drainage commission after the year 1920 shall have the right to call in by lot not exceeding two hundred thousand dollars of said bonds in July of each year, in accordance with the provisions of the said sixth section of the said act No. 114 of 1896.

In witness whereof said Drainage Commission of New Orleans

has caused these presents to be executed in compliance
[L. S.] with said statute by its president and secretary the first day of November, A. D. 1897.

R. M. WALMSLEY, *President.*

(Signed) FREDERICK G. FRERET, *Secretary.*

115 The following is stamped across the face of the bond:

"It is further stipulated by and between the drainage commission and the holder of this bond, and the said holder assents to the said stipulation, that the said Drainage Commission of New Orleans, or any other corporation authorized by the General Assembly of the State of Louisiana, is authorized to pay and take up this bond at par and accrued interest, after thirty days' notice in one or more newspapers published at New Orleans, at any time after the first day of November, 1899.

"This bond is issued subject, also, to the amendments of act No. 114 of 1896, now pending before the General Assembly of Louisiana of 1898."

The bond has eighty coupons attached, of twenty-five dollars each, two of which have been cut off, being those of May and November, 1898.

Ordinance No. 12656, council series, to transfer the proceeds of the franchise of the New Orleans City and Lake Railroad Company to the Board of Drainage Commissioners, marked "15."

Filed November 22nd, 1898.

Offered in evidence by counsel for interveners.

MAYORALITY OF NEW ORLEANS.
CITY HALL, *September 3d*, 1896.

No. 12656, council series.

An ordinance to transfer the proceeds of the franchise of the New Orleans City and Lake Railroad Company to the Board of Drainage Commissioners for this parish.

SECTION 1. Be it resolved, &c., That the net balance after payment for auxiliary pumps of the sale of the franchise of the N. O. City & Lake R. R. Company be and the same is hereby transferred to the Board of Drainage Commissioners for the parish of Orleans, and the comptroller is hereby directed to warrant on the treasurer for same in favor of said board and the treasurer is hereby directed to pay same.

116 SECTION 2. Be it further resolved, etc., etc., That this ordinance shall take effect from and after its passage.

Adopted by the council of the city of New Orleans September 1st, 1896.

W. R. BRASHEAR,
Clerk of Council.

Approved September 3rd, 1896.

A. BRITTIN,
Act'g Mayor.

A true copy.
T. H. THORPE,
Secretary to the Mayor.

Ordinance No. 13502, council series, transferring the drainage plant known as the Bienville pumping station to the drainage commission, marked "1 6."

Filed November 22, 1898.

Offered in evidence by counsel for interveners.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *July* 14, 1897.

No. 13502, council series.

Be it ordained by the council that the drainage plant knows as the Bienville pumping station, Dublin, Orleans, and auxiliary pump at Melpomene station, be, and the same is hereby, transferred to the drainage commission, to be operated by it in accordance with the provisions of act 114 of the General Assembly of 1896, and the commissioner of public works is hereby authorized and instructed to deliver the said pumps into the custody of said Board of Drainage Commissioners.

Adopted by the council of the city of New Orleans July 13, 1897.

W. R. BRASHEAR,
Clerk of Council.

Approved July 14, 1897.

A. BRITTIN,
Act'g Mayor.

A true copy.
T. H. THORPE,
Secretary to the Mayor.

117 Ordinance No. 13730, council series, transferring the drainage pump known as the Algiers pump to the drainage commission, marked "1 7."

Filed November 22, 1898.

Offered in evidence by counsel for interveners.

MAYORALITY OF NEW ORLEANS,
CITY HALL, *November 3rd*, 1897.

No. 13730, council series.

Be it ordained by the council that the drainage pump known as the Algiers pump be and the same is hereby transferred to the drainage commission to be operated by it in accordance with the

provisions of act No. 114, of the General Assembly of 1896, and the commissioner of public works is hereby authorized and instructed to deliver the said pump into the custody of said Board of Drainage Commissioners.

Adopted by the council of the city of New Orleans November 2, 1897.

W. R. BRASHEAR,
Clerk of Council.

Approved November 3rd, 1897.

W. C. FLOWER, *Mayor.*

A true copy.
R. L. TULLIS,
Secretary to the Mayor.

Report of the Drainage Commission of New Orleans to the Mayor and Council of New Orleans Dated July 2nd, 1897, Marked "1 8."

Filed November 22, 1898.

Offered in evidence by counsel for interveners.

R. M. Walmsley, President. B. M. Harrod, Chief engineer. F. G. Freret, Secretary.

The Drainage Commission of New Orleans, 20, 21, city hall.
(Signed) W. R. B.

NEW ORLEANS, LA., *July 2nd*, 1897.

To the mayor and council of New Orleans.

118 GENTLEMEN: Under the provisions of act 114 of the session of 1896 the legislature made it the duty of the drainage commission to render, semi-annually, after January, 1897, to your honorable body, a full and detailed report of all sums received and sums expended and the purposes for which said expenditures were made and a statement of the progress and character of the work contracted for and performed during the previous six months.

The work undertaken, with E. A. Grasser as the contractor, up to the present time consists of a canal of an average width of sixty feet and a depth of thirteen feet, parallel to Seventeenth *st* Palmetto street, beginning at the east side of Carrollton avenue at a point where that avenue is approached by the present Melpomene outfall and extending to the intersection of Seventeenth street and North Line street, and thence to the Upper Protection Levee canal.

Besides this canal, which will for the present act as the tail-race or outfall of the Melpomene draining machine, and eventually serve as a recipient for the collection of storm water to be lifted up by the No. 6 pumping station, the contractor is required to construct the necessary bridge over the canal at the crossing of Carrollton Avenue road to close the gap in the bank of the New Basin canal, known as the Louques cut, and to construct roadways on the banks of the Seventeenth Street canal, besides providing for the

present egress of the water collected within the area bounded by Dublin Avenue canal, the Upper Protection levee, and the shell road of the New Basin canal. This present contract is a modification of one made with the same contractor on January 18th, but which the drainage commission, acting under the advice of Mr. B. M. Harrod, their chief engineer, deemed best to change on account of the advantage made manifest by his explanations.

The work on the canal was begun by the steam dredge employed by the contractor on the 14th day of June, the delay having been caused by the litigation made necessary by the owners of the property traversed by the canal.

Suits for expropriation have been *prought* against parties owning land on the line of the proposed work, and amicable transfers
119 of property have been arranged with the owners of the remaining property, thus securing a free passage from the Carrollton Avenue to the Upper Protection Levee canal.

The commission has caused its engineer to prepare the necessary specifications and such other data of information as are necessary to enable parties wishing to bid for the erecting of the Central electric power station and the three pumping stations, numbers, 6, 2, and 7, located as shown on map No. 4 of the report of the advisory committee, and for some of the canals and culverts necessary to the successful operation of these pumping machines, and has advertised in newspapers in this city and in others in New York and Chicago inviting proposals for the construction of this portion of the plan of drainage as adopted by your body on July 10th, 1895, ordinance No. 10991, intending that the bids should be opened on June 1st. Owing, however, to the suit brought by the attorney general to test the validity of act No. 114, a postponement has been twice made, until now, the bids are to be opened on July 8th, the supreme court having affirmed the constitutionality of the law creating the drainage commission.

The funds received by the drainage commission consist of $579,582.12, which was the amount transferred by the comptroller of the city on November 13th, 1896, to the custody of the commission.

Since that date there has been expended $20,463.28, as shown by the following statement, which is submitted as a part of this report.

(Signed) W. R. B.

Memorandum of Cash Statement from November 13th, 1896, to Dec.

Received from the comptroller Nov 13, '96.....	$579,582.2
Paid engineering department expenses.....	$12,265.2
Paid Melpomene outfall.....	6,053.3
Paid advertising.....	460.4
Paid furnishing.....	319.2
Paid consulting engineers.....	300.0
Paid printing.....	196.6
Paid test case The State of La. *v.* W. C. Flower *et als*...	109.3
Paid city of New Orleans....	100.0
Paid office expenses.....	658.7
	$820,463.2

120

A true copy of the original.
(Signed) CHAS. J. TARRAT.

CLERK'S OFFICE, CITY HALL, N. O., *Dec'r* 1, 1898.

I certify the foregoing typewritten pages, marked 1, 2, 3, and 4 W. R. B., to be a correct transcript from the records of this office filed by the drainage commission on July 26th, 1897.

(Signed) WALTER R. BRASHEAR,
Clerk of Council.

121 Official proceedings of the city council of date July 13, 189 showing that the report of the drainage commission was read and filed, marked "1 9."

Filed November 22, 1898.

Offered in evidence by counsel for interveners.

OFFICIAL PROCEEDINGS OF THE CITY COUNCIL.

Regular Session.

COUNCIL CHAMBER, CITY HALL,
New Orleans, July 13th, 1897.

The Council met this day at 7:30 o'clock p. m., in regular session with the Hon. A. Brittin, President, in the chair. On calling the roll the following members answered to their names:

Present—Anderson, Brittin, Brophy, Claiborne, Cucullu, Elke, Guillaud, Heilmann, Kohnke, Leahy, Lochte, Marmouget, Moran, Naef, Pedersen, Sherrouse, Story—17.

Absent—Clark, Cooney, Crimen, Dreyfous, Herberger, Hirsch, Holderith, Lafaye, Meader, Muir, Pfister, Ricks, Tosso—13.

Seventeen members and a quorum present.

On motion of Mr. Leahy the reading of the minutes of date July 6th, 1897, were dispensed with and approved as printed.

All absentees except Messrs. Clark, Cooney Hirsch and Ricks entered as below.

COMMUNICATIONS.

From the Mayor—
Mayoralty of New Orleans,
City Hall, July 13, 1897.

To the Members of the City Council:

I herewith submit for your consideration and action thereon the following:

1. Treasurer's report showing balance on hand for week ending July 12th, 1897.

Referred to Committee No. 2.

2. Communication from Commissioner of Police and Public Buildings relative to the workings of his department for the month of June.

3. Communication from Commissioner of Police and Public Buildings showing number of prisoners sent out daily to perform work on public buildings, etc., from July 6th, to July 12th, inc.

Referred to Committee No. 6.

4. Communication from Board of Health relative to the ordinance on the subject of blowing meat.

Referred to Committee No. 4.

5. Communication from General T. M. Miller relative to condition of plank sidewalk on Octavia street running from St. Charles avenue.

...ed to Committee No. 8.

...cation from City Engi... called guides and ...idors of the ...

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...dation, ...
of the board.

Referred to Commit...

8. Communication from Co... er of Public Improvements relative the working of his department.

Referred to Committee No. 8.

A. BRITTIN,
Acting Mayor

Received.

Messrs. Crimen, Herberger, Muir and Tosso here entered.

From the Treasurer—

Balance July 3rd, 1897..	$177,892 17
Receipts since..	94,035 02
	$271,.927 19
Less payments	66,698 65
Balance on hand July 10, 1897.	$205,228 54

Referred to Committee No. 2.

From the Treasurer ...

From A. Downey—Contractor ... for extension of time for the ... tion of the Laurel School.

Referred to Committee No. 2.

From the City Attorney re... the Canal and Claiborne Railro... pany running their Girod and ... avenue cars on time.

Referred to Committee No. 8.

From the School Board rel... closets and heating of public s...

Referred to Committee No. 5.

From the Commissioner of ... Works relative to cleaning N... avenue.

Referred to Committee No. 8.

COMMITTEE REPORTS

Report of Committee No. 2—C... tee on Finance.

New Orleans, July 13th...

To the President and Members ... City Council:

Gentlemen—Your Committee ... respectfully report as follows:

1. Favorably on ordinance re... ordinance No. 12,836 and re-enac... ordinance No. 12,409, C. S., provi... payment of R. F. Keplinger fo... done on Horticultural Hall.

2. Favorably on ordinance co... ing bills or various departments.

3. Favorably on ordinance ... Lochte amending ordinance N... C. S.

4. Favorably with amendment ... dinance by Mr. Guillaud trans... $250.00 to Department of Polic... Public Buildings for payment of ... Electric Company for lighting ... Court building.

5. Favorably with amendment ... dinance by Mr. Brittin transferr... Bienville pumping station to co... Drainage Commission.

6. Favorable by ordinance o... tions of Fred Kleinschmidt, Jas. ... and Schneider Bros. for remis... fines.

7. Communication from Hon. ... Moise with report o Grand Jur... tive to confinement of minors, ... Parish Prison, referred to Prison ... mittee.

8. Report of Drainage Comm... read and filed.

9. Report of Commissioner of ... Works as to the condition of ... of Dublin avenue Drainage Mach... ceived and filed.

10. Relative to the Communi... from the Comptroller regarding ... ance on school buildings owned ... city we would recommend tha... Comptroller be instructed not ... sure any buildings owned by th... and used for public school purp... ... respectfully,

A. BRITTI...
Finance Commit...

...
To the President ...
City Council:

Gentlemen—Your committee ... leave to report as follows:

1. Favorably as amended on ... nance by Mr. Claiborne relative to ... tain restrictions on posting up sig... furnished rooms.

2. Favorably on ordinance by ... Herberger, by request, granting ... mission to J. Weis to operate a ... room corner First and Mag... streets.

Recommitted.

3. Favorably on ordinance by ... Herberger, by request, granting ... mission to Mrs. Laura Troisgr... operate a barroom corner Third ...

124 Report of the drainage commission of New Orleans to the mayor and council of New Orleans, dated July 22, 1898, with financial statement annexed thereto, marked "1 10."

Filed November 22, 1898.

Offered in evidence by counsel for intervener.

R. M. Walmsley, President. B. M. Harrod, Chief engineer. F. G. Freret, Secretary.

The drainage commission of New Orleans, 20, 21 city hall.

(1) W. R. B.

NEW ORLEANS, LOUISIANA, *July 22nd*, 1898.

To the mayor and city council, city.

GENTLEMEN: The drainage commission in this report recapitulates the several contracts into which it has entered since the inception of the work and the progress made on each to June 30th, 1898. A financial statement, covering the same work and time, is appended.

1st. E. A. Grasser, contractor.—Melpomene outfall canal, on Seventeenth street from Carrollton avenue to the Upper Protection canal, May 19th, 1897, 20c. per cubic yard, with 25c. extra for removal, aggregating $53,000.00.

2nd. National Contracting Company, contractor.—Central power station, pumping stations St. Louis No. 2, Metairie No. 6, and Orleans No. 7, with tributary canals, including lined and covered canals on St. Louis, Galvez, Claiborne, and Basin streets, August 9th, 1897. Rates were per unit of material, aggregating approximately $1,588,129.00.

3rd. J. H. Camors, contractor.—Jourdan Avenue canal from St. Claud street to Florida w*lak*, April 22nd, 1898, 24½c. *cubic feet* per — yard of excavation, aggregating $10,054.67.

4th. J. J. Keegan, contractor.—Cleaning Galvez, Broad, Poydras, and Lapeyrouse canals, April 22nd, 1898, 21.7c. per cubic yard of excavation, aggregating $7,341.98. In addition, *to* the sum of $3,526.80 was paid to the board of health for the supply and distribution of disinfectants.

(") W. R. B.

125 5th. National Contracting Company, contractor.—Extention of contract No. 2 to include the lined and covered canals in the Canal and Julia Street system, June 16th, 1898. The same terms, aggregating approximately $180,299.00.

All these works, excepting the 4th with J. J. Keegan, which was undertak*ing* under the celicitation of the board of health, form part of the plan adopted by the council and legislature respectively on July 10th, 1895, and July 9th, 1896.

The drainage commission at the request of the city council has also assumed care of the repairs of the existing drainage machines,

which are now in more efficient condition than they have been for years. The cost of these repairs aggregate- $2,989.27.

Under these several contracts the progress made has been as follows:

1st. Melpomene outfall canal, E. A. Grasser.—This work is entirely complete except the closing of the Louque cut, which will be done upon the completion of the Metarie pumping station No. 6. For this purpose the sum of $1,600 00 is withheld from final payment.

2nd. The Central power station, with three pumping stations and tributary canals lined and unlined.

The Central station is nearly slated and the engine beds erected. The boilers are set up complete, and the brick-setting is being built. A considerable part of both steam and electric machinery is received. The electric crane is erected and in operation by means of an *an* exciter. It will be used by the contractor in setting the bed stones and machinery.

The excavations for the foundation of St. Louis pumping station No. 2 is under way, and the sheet piling at Metairie No. 6 and Orleans No. 7 completed. On the St. Louis canal the excavation is completed for twenty stations or to Galvez street, the brick-work for nineteen stations, and the cover, except the paving, for seventeen stations or to Miro street.

(Signed) (3) W. R. B.

The sheet piling and most of the levee between the Carondelet navigation and the Toulouse drainage canals is completed. The dredging of the New Orleans relief canal has progressed from
126 its lower end at Orleans pumping station No. 7 to within 1,000 feet of the Bienville drainage machine, and such sheet-pile driving as is necessary for it is well advanced.

The "I" beams for Basin street are delivered, and the reports of the inspectors at the several machinery and structural shops at the north and west indicate satisfactory progress and good work.

3rd. Jourdan Avenue canal, J. B. Camors.—This work was started in October, 1897, by hand excavation, with the view of affording work for the laboring poor of the city, and progressed under this system, with an expenditure of about $25,000.00, until it was let to J. B. Camors for completion. The worked is now finished.

4th. Cleaning Galvez, Broad, Proydras, and Lapeyrouse canals, J. J. Keegan.—This work is entirely completed.

5th. Extention of the contract of the National Contracting Company to include the Canal and Julia Street system.—No work has yet been done under this part of the contract.

(Signed) (4) W. R. B.

A financial statement is appended.

Respectfully submitted.

(Signed) R. M. WALMSLEY, *Pres.*

(Signed) F. G. FRERET, *Sec'ty.*

A true copy of the original.
(Signed) CHAS. J. TARRAT.
(Signed) (5) W. R. B.

Cash Account for Twelve Months Ending June 30th, 1898.

Cash balance June 30, 1898.....	559,118.84	
Proceeds 500 bonds sold June 21st, 1898..	505,238.00	
		$1,064,356.84
To debit ac. office expenses....	942.30	
" " " engineering dep't expenses...	23,361.75	
" " " consulting engineers.....	621.75	
" " " cleaning city canals....	10,900.28	
" " " Seventeenth Street canal.....	46,870.43	
To debit ac. printing	9.00	
127 " " " advertising	70.00	
" " " repairs Jourdan Avenue station.....	293.64	
To debit ac. repairs Bienville station.....	1,310.41	
" " " " Dublin "	423.67	
" " " " London "	417.94	
" " " " Melpomene "	240.66	
" " " Orleans	302.95	
" " " Central power station	1,449.18	
" " " pumping station No. 7.....	74.11	
" " " " " 6.....	331.00	
" " " " " 2	70.00	
" " " Orleans relief canal.....	650.25	
" " " Jourdan Ave. canal.....	22,428.28	
" " " Pittsburg test. labor'ty	1,688.35	
" " " testing cement.....	147.90	
" " " bonds (cost of engraving)....	1,755.00	
" " " test case.....	1,003.00	
" " " furnishing ac.....	28.50	
" " " National Contracting Co.....	341,195.80	
		456,586.15
Cash balance June 30th, 1898.....		607,770.69

E. O. E.

(Signed) F. G. FRERET, *Sec'y.*

A true copy of the original.
(Signed) CHAS. J. TARRAT.

CLERK'S OFFICE, CITY HALL,
NEW ORLEANS, *December* 1, 1898.

I certify the foregoing typewritten pages, marked 1, 2, 3, 4, and 5, W. R. B., to be correct transcripts from the records of this office filed July 26th, 1898.

(Signed) WALTER R. BRASHEAR,
Clerk of Council.

128 Official proceedings of the city council of date August 2nd, 1898, showing the report of the drainage commission for the fiscal year ending June 30th, 1898, was received and filed with the clerk of the council, marked "I 11."

Filed November 22nd, 1898.

Offered in evidence by counsel for interveners.

OFFICIAL PR
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COUNCIL CH

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Continued for Argument.

Extract from the minutes, division "D."

TUESDAY, *November* 22, 1898.

esent: Honorable N. H. Rightor, judge.
is case came on this day for trial.
esent: Chas. J. Theard and A. McGuirk, attorneys for relators.
esent: B. K. Miller, Esq., attorney for board of liquidation.
esent: Howe, Spencer & Cocke, attorneys for intervenors, Drain-
'ommission of N. O.
hen, after hearing the pleadings and evidence, the case was
nued till tomorrow, Wednesday, November 23, 1898, at 11
k a. m., for argument.

Continued by Preference.

Extract from the minutes, division "D."

WEDNESDAY, *November* 23*rd*, 1898.

esent: Honorable N. H. Rightor, judge.
is case came on this day for argument and was continued for
er argument to Monday, November, 28th, 1898, at 11 o'clock.

E OF LOUISIANA:

Civil District Court, Parish of Orleans, Division "D."

STATE OF LA. *ex Rel.* MISS L. WILDER & *al.*
vs.
BOARD OF LIQUIDATION OF THE CITY DEBT. } No. 57806.

of evidence on behalf of relators taken in open court on the
th day of November, 1898, before the Honorable N. H. Rightor,
dge.

esent: Charles J. Theard, H. L. Lazarus, and Arthur McGuirk,
elators; B. K. Miller, for defendants; W. W. Howe, for inter-
rs.

Relators produce and offer in evidence ordinance No. 6407,
C. S., of the city of New Orleans, approved May 31st, 1892,
and ordinance No. 66088, C. S., approved September 2nd,
, both duly certified to and now marked "X Y."

ndorsed: 57806. Civil district court, parish of Orleans. State
a. *ex rel.* Miss Wilder & *al. vs.* B'd of Liquidation of City Debt.
of evidence on behalf of relators, taken in open court on the
day of November, 1898. Reported by O. M. Tennison, short-
l reporter. Filed November 28, 1898. W. H'y Allen, d'y clerk.

135 Ordinance No. 6407, council series, setting aside and dedicating to drainage purposes the funds created by sections 8 and 10 of 1890.

Filed December 1st, 1898.

Offered in evidence by counsel for relator.

MAYORALITY OF NEW ORLEANS,
CITY HALL, *June* 4, 1892.

No. 6407, council series.

An ordinance setting aside and dedicating to drainage purposes the funds created by sections 8 and 10 of act 110 of 1890.

Be it ordained by the common council of the city of New Orleans, That that portion of the funds created by sections 8 and 10 of act 110 of 1890, approved July 8th, 1890, for permanent public improvements, be, and the same is hereby, set aside and dedicated to the drainage of the city of New Orleans.

Adopted by the council of the city of New Orleans May 31, 1892.

ED. T. MANNING,
Clerk of Council.

Approved June 4, 1892.

JOHN FITZPATRICK, *Mayor.*

A true copy.
CLARK STEEN,
Secretary to the Mayor.

True copy of ordinance No. 6407 on file in mayor's office.
(Signed) R. L. TULLIS,
[SEAL.] *Secretary to the Mayor.*

New Orleans, Nov. 30, 1898.

Ordinance No. 6688, *Council Series Repealing Ordinance No.* 6407, *Council Series.*

Filed December 1st, 1898.

Offered in evidence by counsel for relator.

MAYORALITY OF NEW ORLEANS,
CITY HALL, *Sept. 9th*, 1892.

No. 6688, council series.

An ordinance repealing ordinance No. 6407, C. S., setting aside and dedicating to drainage purposes the funds created under sections 8 and 10 of act 110 of 1890.

Be it ordained by the council of the city of New Orleans,
136 That ordinance No. 6407, setting aside and dedicating for drainage purposes the funds created by sections 8 and 10 of act 110 of 1890 be, and the same is hereby, repealed.

Adopted by the council of the city of New Orleans Sept. 6th, 1892.

DAN A. ROSE,
Clerk of Council.

Approved Sept. 9th, 1892.

JOHN FITZPATRICK, *Mayor.*

A true copy.
CLARK STEEN,
Secretary to the Mayor.

True copy of ordinance No. 6688 on file in mayor's office.

(Signed) R. L. TULLIS,
[SEAL.] *Secretary to the Mayor.*

New Orleans, Nov. 30, 1898.

Continued to December 1st, 1898.

Extract from the minutes, division "D."

MONDAY, *December 28th*, 1898.

Present: Honorable N. H. Rightor, judge.
This case was continued to Thursday, December 1st, 1898, at 11 o'clock, as first case on docket.

Continued to December 2nd, 1898.

Extract from the minutes, division "D."

THURSDAY, *December 1st*, 1898.

Present: Honorable N. H. Rightor, judge.
This case came on this day for argument, and after hearing counsel till the hour of adjournment the court continued same till tomorrow, Friday, December 2nd, 1898, for further argument.

Submission.

Extract from the minutes, division "D."

FRIDAY, *December 2nd*, 1898.

Present: Honorable N. H. Rightor, judge.
This case came on this day—continued from yesterday—for closing argument, and the court, after hearing counsel, took the matter under consideration.

137 *Opinion of Court.*

Filed Dec. 26, 1898.

Civil District Court, Division "D."

STATE *ex Rel.* MISS L. B. WILDER ET ALS.
vs.
BOARD OF LIQUIDATION CITY DEBT ET ALS. } No. 57806.

The relators, claiming the benefit of articles 315 and 316 of the Louisiana constitution of 1898, have demanded from the board of liquidation payment of a large sum of money as holders of school certificates for certain past years. The board has refused payment on the ground that the mandates on this subject of the constitutional convention of Louisiana are violative of the Constitution of the United States and must be reputed as not written.

Elaborate arguments on both sides of the question have been urged by the distinguished counsel, which have left me in doubt as to where is the better reason. Good sense, as well as a proper self-appreciation, recommend that a local tribunal prescribed over by an humble individual exercising judicial functions alone and without a colleague should shrink from striking with nullity the last expression of organized sovereignty. Those higher and numerously composed tribunals whose special duty is to guard the organic laws of the land when brought in question can better judge of these matters; until they have spoken otherwise, we of the smaller magistracy had best obey what is apparently the will of the sovereign. It seems that only in a case when the liberty or perhaps even the life of a citizen is at stake ought an inferior court to question the will of the sovereign.

It very clearly appears that under the two articles of the constitution invoked by the relators they are entitled to the relief prayed for.

The mandamus is made p-remptory.

Judgment.

Civil District Court, Division "D."

STATE *ex Rel.* MISS L. B. WILDER ET ALS.
vs.
BOARD OF LIQUIDATION CITY DEBT ET ALS. } No. 57806.

138 In this cause, submitted to the court for adjudication, the law and the evidence being in favor of the relators and against the defendant and the intervenor, and for the reasons this day assigned in writing and on file herein—

It is ordered, adjudged, and decreed that the intervention of the Drainage Commission of New Orleans be dismissed, at its cost, said intervenor being without any interest herein.

It is further ordered, adjudged, and decreed that the writ of mandamus herein issued be made peremptory; and accordingly the Board of Liquidation of the City Debt of New Orleans is hereby commanded to pay to the relators, Miss Lucretia B. Wilder and the other persons named in ordinance No. 14591 of the city council and in the list or statement annexed to the petition herein, the certificates of indebtedness issued to said claimants by the city of New Orleans, amounting to the total sum of one hundred and fifteen thousand five hundred and fifty-eight $\frac{33}{100}$ — ($115,558.33), together with interest on each of said certificate- of indebtedness, at the rate of five per cent. per annum, from the 9th day of November, 1898, until paid, the said Board of Liquidation of the City Debt to provide the requisite funds by the sale of a sufficient number of the constitutional bonds of the city of New Orleans of the issue provided for in act No. 110 of the General Assembly for the year 1890 and by the amendment to the constitution of the State submitted to the people by the said act and adopted at the general election in 1892, and it is ordered that the said board of liquidation pay the costs.

Judgment rendered December 16th, 1898.

Judgment signed December 22nd, 1898.

(Signed) N. H. RIGHTOR, *Judge.*

Judgment Signed.

Extract from the Minutes, Division "D."

THURSDAY, *December 22nd*, 1898.

Present: Honorable H. N. Rightor, judge.

This judgment was signed in open court on this day.

Motion of the Board of Liquidation of the City Debt for a Suspensive Appeal.

139 Filed December 23, 1898, and entered on the minutes of same date.

Civil District Court, Division "D."

STATE *ex Rel.* MISS L. B. WILDER ET AL. *vs.* BOARD OF LIQUIDATION CITY DEBT. } No. 57806.

On motion of Branch K. Miller, attorney for defendant, and on suggesting that the latter is advised and believes that there is error to its prejudice in the final judgment rendered on December 16th, 1898, and signed on December 22nd, 1898, and that it desires a suspensive appeal therefrom:

It is ordered that the defendant, The Board of Liquidation of the City Debt, be allowed a suspensive appeal from said final judgment, returnable to the supreme court of Louisiana on the first Monday

in January, 1899, the next legal return day for appeals from this court, on defendants furnishing bond in accordance with law or in the sum as may be agreed upon by relators and defendants, conditioned as the law directs.

Motion of Appeal of the Drainage Commission of New Orleans.

Filed December 23, 1898, and entered on the minutes same date.

Civil District Court, Division "D."

STATE *ex Rel.* MISS L. B. WILDER ET AL.
vs.
BOARD OF LIQUIDATION OF CITY DEBT; THE DRAINAGE COMMISSION of New Orleans, Intervenor. } No. 57806.

On motion, in open court and at the same term, of Howe, Spencer & Cocke, attorneys for the Drainage Commission of New Orleans, intervenor herein, and suggesting that there is error to its prejudice in the final judgment rendered herein on the 16th day of December, 1898, and signed on the 22nd day of December, 1898:

It is ordered that an appeal from said judgment be granted the said intervenor to the supreme court of Louisiana, returnable on the first Monday of January, 1899, on the said intervenor furnishing bond with good and sufficient security, conditioned as the law directs, in the amount necessary for a suspensive appeal, and
140 in the sum of one hundred dollars (&100) for a devolutive appeal.

Bond of Appeal (Drainage Commission of New Orleans).

Filed December 23, 1898.

STATE *ex Rel.* WILDER, ETC.,
vs.
BOARD OF LIQUIDATION, ETC. } No. 57806. D.

Know all men by these presents that we, The Drainage Commission of New Orleans, as principal, and William W. Howe, of New Orleans, as surety, are held and firmly bound unto Paul O. Guerin, clerk of the civil district court for the parish of Orleans, his successors, executors, administrators, and assigns, in the sum of one hundred dollars; for the payment whereof we bind ourselves, our successors, executors, and administrators, firmly by these presents.

Sealed with our seal and dated in the city of New Orleans on this 23d day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas the above-bounden principal obligor has filed this day a motion of appeal from a final judgment in the suit of State *ex rel.* Wilder *et al. v.* Board of Liquidation of the City Debt, &c., No. 57806 of the civil district court for the parish of Orleans, on the 16th day of December, 1898, and signed on the 22nd day of December, 1898:

Now, the condition of the above obligation is such that the above-bound drainage commission shall prosecute its said appeal and shall satisfy whatever judgment may be rendered against it or that the same shall be satisfied by the proceeds of the sale of its estate, real or personal, if it be cast in the appeal; otherwise that the said William W. Howe, surety, shall be liable in its place.

(Signed) THE DRAINAGE COMMISSION OF NEW ORLEANS.
HOWE, SPENCER & COCKE,
Attorneys. [SEAL.]
W. W. HOWE. [SEAL.]

Signed, sealed, and delivered in the presence of—
—— ——.

141 *Bond of Appeal, Board of Liquidation of the City Debt.*

Filed December 23, 1898.

Know all men by these presents that we, The Board of Liquidation of the City Debt, as principal, and The American Surety Company of New York, as surety, are held and firmly bound unto P. O. Guerin, clerk of the civil district court for the parish of Orleans, his successors, executors, administrators, and assigns, in the sum of one hundred and twenty thousand dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seal and dated in the city of New Orleans on this 23rd day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas the above-bounden Board of Liquidation of the City Debt has filed this day a motion of appeal from a final judgment rendered against it in the suit of State *ex rel.* Miss L. B. Wilder *et als. vs.* The Board of Liquidation of the City Debt, No. 57806 of the civil district court for the parish of Orleans, on the 16th day of December, 1898, and signed on the 22nd day of December, 1898:

Now, the condition of the above obligation is such that the above-bound Board of Liquidation of the City Debt shall prosecute its said appeal and shall satisfy whatever judgment may be rendered against it or that the same shall be satisfied by the proceeds of the sale of its estate, real or *estate*, if it be cast in the appeal: otherwise that the said American Surety Company of New York shall be liable in its place.

(Signed) BOARD OF LIQUIDATION OF THE CITY DEBT,
By R. M. WALMSLEY, *President.* [SEAL.]
THE AMERICAN SURETY COMPANY OF NEW YORK,
By ARTHUR AMBROSE MAGINNIS,
Resident Vice-President. [SEAL.]
PETER F. PESCUD,
Resident Ass't Secretary.

Signed, sealed, and delivered in the presence of—
—— ——. [SEAL.]

142 *Agreement as to Bond of Appeal of the Board of Liquidation of the City Debt.*

Filed December 23rd, 1898.

Civil District Court, Division "D."

STATE *ex Rel.* L. B. WILDER ET AL.
vs.
BOARD OF LIQUIDATION OF THE CITY DEBT. } No. 57806.

It is hereby understood and agreed that the bond for the suspensive appeal this day filed by defendant under the order for a suspensive appeal herein granted to the supreme court of the State shall be for the sum of one hundred and twenty thousand dollars ($120,000.00) and no more, the said bond to be taken, considered, construed, and to have effect the same as if it were for the sum required by law for a suspensive appeal, the true intent and meaning hereof being to relieve defendant from furnishing an appeal bond for any larger amount, the said bond, so furnished, to suspend the execution of the judgment herein as in case of a suspensive appeal.

(Signed) CHAS. J. THEARD, *For Self, &*
A. McGUIRK &
H. L. LAZARUS,
Att'ys for Ap, dlees.

(") BRANCH K. MILLER,
Att'y for Defendants and Appellants.

Certificate.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, Jas. C. Peyton, deputy clerk of the civil district court for the parish of Orleans, do hereby certify that the foregoing one hundred and twenty-nine (129) pages and plan of drainage annexed in original form do contain a true, correct, and complete transcript of all the proceedings had, documents filed, and evidence adduced upon the trial of the cause wherein State of Louisiana *ex rel.* Miss L. B. Wilder *et al.* are plaintiffs and Board of Liquidation of the City Debt is defendant, instituted in this court and now in the records thereof under the No. 57806 of the docket of this honorable court, division "D," Honorable N. H. Rightor, judge.

In testimony whereof I have hereunto set my hand and affixed the impress of the seal of said court, at the city of New Orleans, on this twenty-third day of December, in the year of our Lord one thousand eight hundred and ninety-eight, and in the one hundred and twenty-third year of the Independence of the United States of America.

[SEAL.] (Signed) JAS. C. PEYTON, *D'y Clerk.*

143 UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

Proceedings had in the supreme court of the State of Louisiana on the appeals taken by the Board of Liquidation of the City Debt and the Drainage Commission of New Orleans.

STATE *ex Rel.* MISS L. B. WILDER ET ALS.
vs.
BOARD OF LIQUIDATION CITY DEBT ET AL. } No. 13034.

Transcript of appeal filed December 24, 1899.
(Signed) PAUL E. MORTIMER,
Deputy Clerk.

Assignment of Errors.

Supreme Court of Louisiana.

STATE *ex Rel.* MISS L. B. WILDER ET AL.
vs.
BOARD OF LIQUIDATION OF CITY DEBT, &C. } No. 13034.

Assignment of errors.

The Drainage Commission of New Orleans, intervenor herein, assigns the following errors in the judgment rendered herein by the lower court:

The court below erred in rendering judgment in favor of the relators.

The court below erred in dismissing the intervention of this intervenor and in holding that this intervenor had no interest in this cause.

144 The court below erred in holding articles 315, 316, and 317 of the constitution of Louisiana of 1898 to be valid and binding in this cause and as justifying the judgment rendered herein by said lower court.

The said articles 315, 316, and 317 of the constitution of Louisiana of 1898 violate the enabling act No. 52 of 1896, which prohibited the convention which adopted said constitution from enacting, ordaining, or framing any article or ordinance whereby the bonded indebtedness of the State or of any parochial, municipal, levy, or other political corporation thereof should be affected, impaired, or scaled, or the principal or interest thereof remitted, reduced, suspended, or abolished without the consent of the holders of such bonds or security, and the court below erred in deciding to the contrary and so rendering judgment in favor of relators.

The articles 315, 316, and 317 of the constitution of Louisiana of 1898 are null and void because they violate article 1, section 10, of the Constitution of the United States, which forbids a State to pass any law impairing the obligation of contracts. The said articles of

said constitution impair the obligation of the contracts made under act 110 of 1890 and the constitutional amendment thereby proposed and adopted in 1892, and the obligation of the contracts made by the drainage commission under the acts 114 of 1896 and No. 63 of 1898 for drainage work, and the obligation of contracts evidenced by the bonds issued and sold by said drainage commission, to the extent of $500,000; and the court below erred in ruling to the contrary and holding said articles 315, 316, and 317 to be not in violation of said provision of the Constitution of the United States and to be valid, and so giving judgment in favor of relators.

145 & 146 The articles 315, 316, and 317 of the constitution of Louisiana of 1898 are null and void because they violate the provision of the 14th article of amendment to the Constitution of the United States, which forbids any State to deprive any person of property without due process of law, and the court below erred in holding otherwise and so giving judgment for relators.

And for these and other errors apparent on the face of the record said intervenor, appellant, prays that the said judgment herein, rendered December 16, 1898, and signed December 22, 1898, be avoided and reversed, and that the suit of relators be dismissed, and for costs and for general relief.

(Signed) HOWE, SPENCER & COCKE,
Attorneys for Intervenor, Appellant.

Endorsed: No. 13034. Supreme court. State of Louisiana *ex rel.* Miss L. B. Wilder *et als. vs.* The Board of Liquidation of the City Debt. Assignment of errors of the Drainage Commission, intervenor. Filed December 24, 1898. (Signed) T. McC. Hyman, clerk.

Report of the Drainage Commission of 1895.

(Omitted in printing per stipulation of counsel.)

147 *Motion and Order to Fix Case.*

SATURDAY, *December* 24*th*, 1898.

STATE OF LOUISIANA *ex Rel.* MISS L. B. WILDER and Others
vs.
THE BOARD OF LIQUIDATION OF THE CITY DEBT. } No. 13034.

On joint motion of counsel for all parties in interest, and upon suggesting to the court that this is a case in which an early decision is desirable in the public interest, it is ordered that the case be heard by preference on Saturday, the 24th day of December, A. D. 1898.

Filing Agreement as to Transcript.

STATE *ex Rel.* MISS L. B. WILDER and Others
vs.
THE BOARD OF LIQUIDATION OF THE CITY DEBT. } No. 13034.

By agreement between counsel for the parties in interest, in open court, the transcript of appeal in this case, hastily prepared by the clerk of the lower court, may be completed by adding thereto any portions of the record not included in the transcript of appeal just now filed. The right is also reserved the Board of Liquidation of the City Debt to file their assignment of errors in this case.

Cause Heard and Submitted.

DECEMBER 24TH, 1898.

STATE *ex Rel.* MISS L. B. WILDER ET ALS.
vs.
BOARD OF LIQUIDATION CITY DEBT ET AL. } No. 13034.

This cause came on this day to be heard, and was argued
148 by counsel. Mr. Charles J. Theard opened for the relators and appellees. Mr. Branch K. Miller replied for The Board of Liquidation of the City Debt, respondent and appellant, followed by Mr. William Wirt Howe, for The Drainage Commission of New Orleans, intervenor and appellant, and Mr. Henry L. Lazarus, on behalf of the relators, closed the argument. The court then took the cause under advisement upon the briefs for the parties in interest and the papers now on file. (Mr. Justice Miller recuses himself in this case.)

Opinion of the Court.

UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

NEW ORLEANS, LA., MONDAY, *May 1st*, 1899.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, associate justices.

His honor the chief justice pronounced the opinion and judgment of the court in the following case:

149 STATE *ex Rel.* MISS L. B. WILDER ET ALS. *vs.* BOARD OF LIQUIDATION CITY DEBT ET AL. } No. 13034.

Appeal from the civil district court for the parish of Orleans.

By the 315th article of the constitution the city of New Orleans was authorized and required to examine into and assume payment of the obligations of the board of directors of the public schools of the parish of Orleans for unpaid salaries of school teachers and portresses and other legitimate claims against said school board for the years 1882, 1883, and 1884, and for unpaid salaries of school teachers and portresses for the years 1885, 1886, and 1887, then (now) in the hands of the original holders, who have in nowise parted with their rights of ownership or pledged the same as may be found equitably due by said board.

By the 316th article the city council was directed to issue certificates of indebtedness to the owners of said claims, when examined and found to be equitably due, and that all such certificates should be paid by the board of liquidation.

The article provided that if any of the claims aforesaid should be rejected by the city council the decision thereon might be reviewed by any court of competent jurisdiction, and the judgment of the court thereon should, if in favor of the claimant, be likewise paid by the board of liquidation.

The 317th article directed that the funds requisite to pay said claims should be provided by the sale of a sufficient number of the constitutional bonds of the city of New Orleans of the issue provided for by act No. 110 of the General Assembly for the year
150 1890 and by the amendment to the constitution of the State submitted to the people by said act and adopted at the general election in 1892.

Acting under and by virtue of the provisions of these articles of the constitution, the city council of New Orleans examined into and assumed payment of the school teachers and portresses of the public schools of that city for the years 1882, 1883, and 1884, and the city comptroller, by direction of the council, issued certificates of indebtedness, countersigned by the mayor, setting forth the amount due by the city to each claimant and representing a total sum of one hundred and fifteen thousand five hundred and fifty-eight dollars and thirty-three cents.

The board of liquidation on presentation of the same to them for payment refused to pay the same on the ground that the mode of payment provided by article 317 of the constitution, to wit, by the sale of bonds of the issue provided for by act No. 110 of 1890 (constitutional amendment of 1892), would impair the obligation of contracts, and therefore be a violation of the Constitution of the United States.

The holders of the certificates thereupon cited the board of liquidation into the civil district court to show cause why a writ of mandamus should not issue against them commanding them to pay the certificates, together with legal interest thereon, from judicial

demand until paid, and provide the requisite funds by the sale of a sufficient number of said constitutional bonds.

The board of liquidation answered, pleading, first, the general issue. Averring its right and its duty so to do, it resisted plaintiffs' demand on the assigned grounds and prayed that their demand be rejected.

The Drainage Commissioners of the City of New Orleans intervened in the case, joining the defendants in resisting the demand of the plaintiffs.

151 The latter excepted to the right of the drainage commission to intervene and its right and authority, and that of the board of liquidation, to set up the issues tendered.

The district court dismissed the intervention of the drainage commission and ordered the mandamus prayed for to issue.

The drainage commission and the board of liquidation appealed. In their brief plaintiffs say: "It might well be asked what right the board of liquidation had to assail the validity of the constitution of Louisiana. Created by act No. 133 of the legislature of 1880, the board of liquidation is merely a servant of the people.

"Its members are trusted clerks, charged generally with the liquidation of the city debt; that is all. They are not above the law; they are creatures of the law. If it be true that the act of 1890 or constitutional amendment of 1892 confided to them a special trust, it is also true that they received said trust from the sovereign State of Louisiana, and that she may well modify the instructions which she had seen fit originally to give. It cannot be admitted for a moment that the board of liquidation would have the right in any case to disregard and disobey the mandate of the constitution and resist and defy the will of the people."

A similar claim was advanced by The Board of Public School Directors *vs.* The City of New Orleans (42 Ann., 96), and held by this court to be not well founded.

We adhere to that conclusion, and adopt as correct the reasons assigned by the court for reaching it.

It by no manner of means follows that a board which owes its existence to statute authority and has its powers and duties defined thereby is necessarily under a continuing liability to have its future conduct and its future duties controlled by the same authority.

152 There are doubtless cases where this power of control continues absolutely, but there are others where, though it may be continued, it is under limitations, and others again when it ceases altogether.

This question has to be determined in each case by the nature and character of the duties cast upon the board; the rights of third parties, which may have resulted from an acceptance of the trust, and the duty and liability of the board itself and its members, as resulting from the same fact.

In the case just referred to the court said: "It would be passing strange, indeed, if, after the defendants here have been commanded to show cause why the relief sought against them should not be

granted, they could be met when they appear in response with the objection that they have no standing in court" (11th Wall, 267; 17th Ann., 251; 39 Ann., 11).

The court further said it did not hold (in 41 Ann., 156) that the city did not possess the right of pleading its unconstitutionality, and that they must not be heard.

Article 254 of the constitution of 1879, referring to the powers and duties of the legislature in respect to the city of New Orleans, said: "The General Assembly at its next session after the adoption of the constitution, shall enact such legislation as may be proper to liquidate the indebtedness of the city of New Orleans and apply its assets to the satisfaction thereof.

"It shall have authority to cancel the charter of said city and remit its inhabitants to another form of government, if necessary."

This article was adopted in view of the very many sweeping alterations made in the constitution in the powers of taxation, not only of the different parish and municipal corporations of the State, but of the State itself, and in the extent of legislative control over corporations, both private and public.

Article 45 prohibited the General Assembly from granting
153 or authorizing any parish or municipal authority to grant any extra compensation, fee, or allowance to a public officer, agent, servant, or contractor, or authorize the payment of any claim against the State or any parish or municipality of the State, under any agreement or contract made without express authority of law, and all such agreements or contracts should be null and void.

By article 46 the General Assembly was prohibited from passing any local or special law "creating corporations, or amending, renewing, extending, or explaining the charter thereof, provided this should not apply to the corporation of the city of New Orleans, or granting to any corporation any special or exclusive right, privilege, or immunity, or legalizing the unauthorized or invalid acts of any officer, servant, — agent of the State or of any parish or municipality thereof."

Article 202 declared that the taxing power might be exercised by the General Assembly for State purposes and by parish and municipal corporations under authority granted to them by the General Assembly for parish and municipal purposes, but by article 209 the State tax on property for all purposes whatever, including expenses of government, schools, levees, and interest, should not exceed in any one year six mills of the dollar of its assessed value, if the ordinance regarding the bonded debt of the State should be adopted and ratified by the people, and if said ordinance should not be adopted and ratified by the people said State tax for all purposes should not exceed in any one year five mills on the dollar of the assessed valuation, and no parish or municipal tax for all purposes whatsoever should exceed ten mills on the dollar of valuation. Article 229, however, directed that the General Assembly should provide that every parish might levy a tax for the public schools therein, which should not exceed the State tax, provided that with

such tax the whole amount of parish taxes should not exceed the limits of parish taxation fixed by the constitution.

154 In 1880 the General Assembly passed act No. 133, entitled "An act to liquidate the indebtedness of the city of New Orleans and apply its assets to the satisfaction thereof, to create a board of liquidation and prescribe their duties, and to provide for a fiscal agent and for the levying of a special tax to pay said interest."

For the purpose of carrying out the purposes of the act and liquidating the indebtedness of the city, a board designated as the board of liquidation of the city debt was created, to which the duty was assigned or delegated of retiring and cancelling "the entire debt of the city," except the floating debt created up to the date of the passage of the act (April, 1880)." The board was authorized and directed to have certain described bonds prepared, which it was declared were to be used exclusively for the purpose of negotiation or of exchange, as therein provided for. The method provided for, for retiring the debt, was either by the sale of the new bonds or by their exchange for old ones. It was provided that the entire issue of new bonds to be sold or exchanged should not exceed ten million- of dollars. It was declared that nothing in the act should be construed as affecting article No. 31 of 1876, known as the "premium bond act," and it was made the duty of the city authorities to turn over and transfer to the board all monies collected on account of the tax levied in accordance with the provisions of that act, and it was made the duty of the board to apportion the proceeds of said tax and apportion the same *pro rata* and in the proportion which each form of bonded indebtedness should bear to the entire amount of the city's debt, and such portions of the said proceeds of tax as should not properly belong to the outstanding amount of premium bonds were directed to be applied to the payment of the bonds created by the act then being enacted. The act required the city council to levy an annual tax, calculated upon the assessment of the preceding year, less twenty per cent., sufficient to pay in

155 full the interest on all the bonds issued under its provisions, and it directed that any tax levied should continue in force until superseded by a new tax levy for the same purpose.

The surplus arising from the collection of the debt and interest tax or from the sale of assets in the hands of the board, after paying the interest coupons of the bonds to be issued under the act, were ordered to be used for the purchase and retirement of any valid bond of the city created before the passage of the act at a rate not exceeding fifty cents on the dollar, or at the discretion of the board, for the retirement of the bonds created under the act, at a price not exceeding par, and the bonds or obligations purchased, exchanged, or retired were directed to be cancelled. The fourth section of the act subjected the members of the board to a criminal prosecution should they knowingly audit, fund, or purchase or retire for value any illegal obligation of the city or use any portion of the bonds authorized to be issued or the proceeds for purposes otherwise than those contemplated by the act.

In 1882 the General Assembly, by act No. 58 of that year, authorized

the city of New Orleans to renew and extend payment of her outstanding bonds other than premium bonds, to provide the rate of interest on the bonds as renewed or extended, and to levy a tax to pay the same. This tax, the act declared, should never exceed one-half of one per cent. nor be less than one-quarter of one per cent. on the assessed valuation of all taxable property, and should be turned over as collected to the board of liquidation in the same manner as the premium bond tax, to be by them depositsd to the credit of the city debt fund and to be applied exclusively for the objects and purposes therein declared.

The act directed that all funds then or which might be at the date of the passage of the act in the hands of the board of liquidation under existing laws should be deposited with the fiscal agent
156 of the board to the credit of the account known as the "city debt fund," which fund should be used exclusively to the purchase on the most favorable terms, not exceeding par, of the face value of the outstanding bonds or coupons or certificates therefor of the city, which were extended or to be extended under the provisions of the act then being enacted, provided that said city debt fund should be used first to provide for and pay the interest on the bonds and certificates contemplated in the act, and the city was directed, in its annual budget, to make an appropriation to carry out the provisions of the act.

The seventh section directed that the surplus proceeds of any of the premium bond tax of each year remaining in the hands of the board of liquidation or surplus on hand at the time of the passage of the act, after all the drawn series, interest, and premiums thereon exigible or due to the holders thereof have been provided for or fully paid, should also be deposited with the fiscal agent of the board to the credit of the account known as the city debt fund and applied exclusively as provided in section fifth.

The tenth section declared the act in all its parts, provisions, terms, conditions, obligations, and limitations should be deemed to be and be a valid, binding contract between the State of Louisiana, the city of New Orleans, its residents, citizens, and tax-payers, and the holders of the bonds authorized in the act to be extended.

In July, 1884, the General Assembly passed an act known as No. 67 of that session, entitled "An act to amend and re-enact sections 2, 3, & 5 of an act entitled 'An act to liquidate the indebtedness of the city of New Orleans and to apply its assets to the satisfaction thereof, to create a board of liquidation and prescribe their duties, and to provide for a fiscal agent and for the levying of a sufficient tax to pay said interest,' approved April 10th, 1880, and to further provide for the redemption of the bonds authorized herein,
157 the payment of the interest on the same when said tax is not levied, and for the disposition and sale of said assets and other property."

The act so amended is the act hereinbefore referred to as act No. 133 of 1880.

The amendment to the second section consisted in extending the powers and duties of the board of liquidation so as to give it ex

clusive control and direction of not only all matters relating to the "bonded debt" of the city, but of all matters relating to the "judgment and bonded" debt of the city, and in altering the form and terms of the bonds which the board had been directed to have prepared.

The third section of the act of 1880 as amended authorized and required and made it the duty of the board to retire and cancel the entire debt of the city standing at the time of the passage of the amending act in the form of executory judgments and registered under the provisions of act No. 5 of 1870 and that which thereafter might become merged into executory judgments and likewise registered, except the floating debt or claims created for and against the year 1879 and subsequent years.

It declared that it was the full intent and meaning of the amending act to apply solely the privileges thereof to executory judgments at that time rendered (the passage of the new act) against the city and to such floating debt or claims against said city for 1878 and previous years merged and to be merged into executory judgments, whether absolute or rendered against the revenues of any particular year or years previous to the year 1879.

For the purpose of retiring and cancelling said judgment debt the board was authorized and required either to sell the bonds to be issued under the act at not less than their par value and apply the proceeds thereof to the payment of the said judgments as specified or to issue said bonds in exchange thereof.

158 In July, 1890, the General Assembly passed an act which appears in the published acts of that session under the number 110, but is referred to in the amendment to the constitution of 1879, adopted in 1892, as act No. 36.

This act, though it preceded the adoption of the amendment, was entitled "An act to carry into effect the constitutional amendment passed at the present session of the legislature relative to the bond debt of the city of New Orleans, and to authorize and direct the said city to issue through the board of liquidation of the city debt, four per cent. bonds to be known as the constitutional bonds of the city of New Orleans, payable fifty years from date; and to direct the retirement of the now outstanding bond debt of said city, premium bonds excepted, by the sale of said constitutional bonds and application of proceeds by the board of liquidation to the payment of said outstanding bonds, premium bonds excepted, and to the payment, also, of certain judgments against the city on floating debt claims created prior to 1879, and to authorize the purchase by said board of said outstanding bonds, other than premium bonds, or the exchange thereof, for said constitutional bonds and for the payment of said outstanding bonds, and of the aforesaid outstanding bonds not retired under this act and for the payment of the annual allotment of premium bonds and premiums; to direct the levy and collection by the city of one per cent. now levied for the bond debt and to direct the payment to and application by the board of liquidation of said taxes to the purpose aforesaid, for which it is levied, and to provide a sinking fund for said constitutional city

bonds, and for the disposition of the surplus of said tax not required for the aforesaid bond debt, and to recognize said tax as the contract right of the holders of the aforesaid bonds and to recognize, also, the exemption of said constitutional bonds from all taxation, and to define the functions and powers of said board of liquidation."

159 The first section of that act declares that, in order to provide for the retirement of the outstanding bonded indebtedness of the city of New Orleans and such other indebtedness as under existing laws is or becomes entitled to be funded into any series of bonds, always saving and excepting, however, the bonds known as premium bonds, the city of New Orleans be authorized, empowered, and directed to issue bonds to the amount of ten million- of dollars, described as to their form and terms.

It directs that these bonds, when executed, should be delivered to the board of liquidation of the city debt, to be used for the purposes aforesaid, in accordance with the provisions of the act.

The second section authorized and empowered the board to sell and dispose of such amounts of said constitutional bonds as might be requisite for the purposes expressed in the later section of the act and fixed the terms and conditions on which they should be sold.

The third section directed that all the funds received by the board from the sale of constitutional bonds should be immediately deposited with the fiscal agent of the city of New Orleans to the credit of a special fund called the bond-sales fund, which said fund should be used solely and exclusively for the purpose of retiring by payment all the said now outstanding valid bonds of the city of New Orleans matured or subject to be called upon, including the certificates of bonds issued under the fourth section of act No. 54 of 1882 and including judgments then or thereafter rendered on floating-debt claims prior to 1879 entitled to be funded under act No. 67 of 1884, but excluding premium bonds issued under act No. 31 of 1876 not to be retired under the act

The fourth section gave the board power, after the payment of all aforesaid outstanding bonds subject to call or matured as provided in the third section, to purchase the unmatured outstanding bonds of the city, premium bonds always excepted, and fixed

160 the terms and conditions under which the purchase could be made.

The fifth section authorized the board to exchange bonds issued under the act for valid outstanding bonds of the city, premium bonds excepted, and fixed the manner, terms, and conditions under which the exchange could be made.

The seventh section made it the duty of the council, in order to provide for the payment of the principal and interest of the constitutional bonds authorized to be issued by the act and all other valid outstanding bonds of the city, to levy for the year 1892, and annually thereafter until the principal and interest of the bonds authorized to be issued was fully paid, a special ad valorem tax of one per cent. upon all the taxable property of the city, said special tax to be a part of and not in addition to the tax of twenty mills and two-

tenths of a mill on the dollar of value then levied for all purposes by the city of New Orleans.

The eighth section directed that out of the proceeds of said one per cent. per annum tax beginning in the year 1892 the board of liquidation should annually provide for the carrying of the premium-bond plan, the payment of the interest upon the bonds authorized to be issued by the act and of the interest upon all other outstanding interest-bearing bonds of the city, and after the year 1925 for the annual sinking fund necessary to call and retire the number of bonds provided for in section 9 of the act.

It further directed that after making in each year the provisions above required, and after deducting the expenses incurred by said board, and after paying any deficiency in the interest fund of any previous years one-half of the surplus should be passed to the credit of a special fund to be known as the "permanent public improvement fund," to be disposed of as disposed of later in the act, and the other half of said surplus should be paid over to the
161 school board of the city in addition to any other fund appropriated by said city out of other funds, to be used in the maintenance and support of the public schools in said city.

The tenth section directed that "the permanent public improvement fund" should be used exclusively for the purpose of the construction of permanent public improvements in the city, such as levees, canals, drainage stations, pavements, public buildings, public parks and bridges, and required that all ordinances passed by the common council to be paid out of this fund should be first approved by the said board of liquidation, who should not draw any checks on said fund unless they should be convinced, upon proper enquiry, that said ordinances covered the construction of a permanent improvement within the purview of the act. It was declared in the section that the true meaning of this clause was not to give said board any authority to say to what permanent public improvement any fund should be applied, but only to see that said funds should be applied exclusively to the construction of improvements that are permanent.

In the 11th section of the act the board of liquidation was created a body corporate, with power to sue and be sued; it was declared that nothing in the act should be construed to affect or change in any manner the duties, powers, and functions of the board of liquidation under existing laws not inconsistent with it or the rights of said board to the assets and property of the city not dedicated to public use, including the uncollected taxes prior to 1879, but said duties, functions, rights, and powers were maintained and confirmed in full force.

The 16th section declared all the substantial provisions of the act to be a contract between the State of Louisiana, the city of New Orleans, the tax-payers of said city, and each and every holder of said constitutional bonds.

The 18th section declared that nothing in the act contained
162 should be construed to affect or disturb in any manner the existing right to the tax now (then) levied for premium bonds

and for said outstanding bonds not retired, said tax being preserved in full force, and the payment of the allotments of premium bonds and premiums extant in the hands of holders and of the interest and principal at maturity of all outstanding bonds that might not be retired under the act, should it continue as now (then), directed under existing laws, said tax of one per cent. being levied for premium bonds and outstanding bonds not retired, as well as for the aforesaid constitutional bonds substituted for the outstanding bonds paid, purchased, or retired by exchanges under the act.

The 19th section declared the general provisions of the act should not take effect until the adoption of the constitutional amendment then contemplated, and repealed all laws or parts of laws contrary to or inconsistent with the act.

The constitutional amendment referred to was submitted to and adopted by the people, and was as follows:

"For the purpose of retiring the now existing valid outstanding bonds of the city of New Orleans, including the bond certificates or bonds issued under the act of the legislature No. 58 of 1882, and to retire judgments now or hereafter rendered against the city on floating-debt claims prior to 1879, entitled to be funded under act 67 of 1884, the said city of New Orleans is hereby authorized and directed, on and after the adoption of this amendment, to issue, through the Board of Liquidation of the City Debt, bonds to be known as the *the* constitutional bonds of the city of New Orleans, not exceeding ten millions of dollars, at fifty years, bearing four per cent. per annum interest, to bear date and be in the form prescribed by the legislature. The said bonds shall be applied by the said board to the retirement of said outstanding bonds and judgments by the sale of said constitutional bonds, and
163 application of the proceeds of sale by the board of liquidation to pay or purchase said outstanding bonds and judgments or by exchanging the said constitutional bonds for bonds on the term*d* and in the mode prescribed by the legislature. For the payment of the interest and principal at maturity of said constitutional bonds and other outstanding bonds not retired under this amendment, and for the payment of the annual allotments and premiums of the premium bonds of said city, the said city is hereby authorize*s* and directed to lev*t* annually, and until the full payment of said bonds, a special tax of one per cent. on all the real and personal property of the city—said tax to be part of and not in addition to the tax of twenty mills and two-tenths of a mill on the dollar of the valuation now levied for all purposes by the city of New Orleans—and the said tax shall be paid over as collected to and be applied by the board of liquidation to the payment of the interest and principal at maturity of said constitutional bonds and outstanding bonds not retired and to the payment of the allotments of premium bonds and premiums extant in the hands of holders. Said tax is hereby declared to be the contract right of the holders of all of said bonds, and the exemption of said constitutional bonds from all taxation by the city of New Orleans and State of Louisiana—hereby recognized and declared; and after the payment of all the

interest on said constitutional bonds and bonds not retired and the payment of the said annual allotments of premium bonds and premiums extant in the hands of holders, and after making provisions for a sinking fund at such time and of such amount as the legislature prescribes, the surplus of said one per cent. shall be disposed of by the legislature."

— the act passed at the present session, No. 36, entitled "An act to carry into effect the constitutional amendment passed at the present session relative to the bond debt of the city of New Orleans," etc., be, and is hereby, approved and confirmed in all its parts as a contract between the city of New Orleans and the holders of
164 said constitutional bonds, premium bonds, and of the bonds outstanding not retired as aforesaid.

The city of New Orleans is hereby authorized and empowered to examine into and assume the payment of the claims and obligations of the board of school directors for the city and parish of Orleans due for the year- 1880, 1881, 1882, 1883, and 1884, now on the hands of original owners who have in nowise parted with their right of ownership or pledged the same as may be found to be equitably due by said board for services rendered, labor performed, or materials furnished by authority of said board.

In 1896, by act No. 114, the General Assembly created a drainage commission for the city of New Orleans. It gave the commission full power to control and execute the drainage of the city, authorizing it to proceed to execute and carry out substantially the plan for such drainage adopted by the council of said city by ordinance 10091, council series, approved 10 July, 1895, so far as it might find said plan desirable and practicable, with the right — power to modify the same as in its judgment circumstances might require. All work done or supplies and materials ordered by the commission were directed to be let out to the lowest bidder. In order to raise funds for the purpose of doing the work speedily and on an extensive scale the commission was given power to issue and dispose of its negotiable bonds, bearing interest at a rate not exceeding five per cent. per annum, payable semi-annually, to be sold by the commission at not less than par.

That portion of the funds in the hands of the board of liquidation under the provisions of section- 6 and 10 of act No. 110 of 1890 accruing to public works, etc., from January, 1898, was dedicated and applied for the purposes of the act, and all monies and funds at the time of the passage of the act under the control of the city of New Orleans and afterwards to be received arising from the sale
165 of street-railroad franchises or other franchises were also dedicated and applied to the purposes of the act.

All monies and funds dedicated and applied for the purposes of the act were declared to be consecrated to the payment of the principal and interest on said bonds. It was declared that all the provisions of the act respecting the dedication and application of funds and money constituted a contract with the holder or holders of bonds issued, the obligation of which contract should not be impaired.

In 1898, by act 63, the General Assembly amended and re-enacted sections 6, 7, and 8 of act 114 of 1896, creating the drainage commission. Under the amendment to section 6 the amount of bonds which the drainage commission had been authorized to issue was reduced from five millions to one million five hundred thousand dollars. In the same amending section it was declared that all monies and funds dedicated and applied by the act to the purposes thereof were primarily consecrated to the payment of the interest on said bonds and the redemption of the principal thereof, as provided in the act, but any surplus of said funds inuring to said commission from taxes of 1899, 1900, 1901, and 1902 and from other sources prior to January 1st, 1893, not required to pay current interest on said bonds, might be used for the general purposes of said commission.

The commission, after the year 1920, was given the right and it was made its duty to call in and pay not exceeding two hundred thousand dollars of said bonds in each year and in the order of their issue, beginning with number one.

By the seventh section of the act its provisions respecting the dedication and application of funds and monies was declared to constitute a contract primarily with the holders of said bonds, as aforesaid, to the extent as aforesaid, and also with each and every person or corporation that may have entered into contracts with the
166 said commission, and it was further declared that the obligation of said contract as to dedication and application of funds and monies should not be impaired as might be enforced by any holder of said bonds or by any contract creditor of said commission by mandamus and injunction or by other proceedings in court.

In 1886 this court was called upon, in Labatt *vs.* New Orleans, 38 Ann., 284, to pass upon the right of the plaintiff therein declaring on certificates issued by the board of directors of the public schools of the city of New Orleans during the years 1874, 1875, and 1876, to recover judgment thereon against the city of New Orleans, the ulterior object being to obtain therefor bonds of said city to be issued under the provisions of act No. 67 of the legislature of 1884, which was amendatory of act No. 133 of 1880, passed for the purpose of liquidating the indebtedness of the city of New Orleans.

The court in its opinion stated that the main contention hinged upon the question as to whether such certificates evidenced or not an indebtedness of the city of New Orleans; that plaintiff's argument was that those certificates constituted a part of the indebtedness of the city of New Orleans, but that if, when issued, they were not debts of the city, they had acquired that character under a correct construction of article 254 of the constitution of 1879 and of section 3 of article No. 74 of 1880, which purposed to enforce the provisions of article 254 of the constitution.

After an examination of the certificates, the court was of the opinion that they were not evidences of debt against the city and their holders had no right to obtain judgment against the city with a view to have the same converted into bonds under the provisions of act No. 67 of 1884; that that portion of act No. 74 of 1880 which

placed the unpaid salaries of school teachers subsequent to 1872 and prior to January 1st, 1880, on the same footing with the
167 valid indebtedness of the city of New Orleans and authorized bonds might be issued to take up school-board certificates which had been issued for the same was unconstitutional and therefore void.

Referring to plaintiff's argument that this act was authorized by article 254 of the constitution reading "that the General Assembly shall enact such laws as may be proper to liquidate the indebtedness of the city of New Orleans and apply its assets to the satisfaction thereof," the court said: "It can scarcely be argued that by this language the convention could be construed to have meant that the legislature could provide for the liquidation of claims which were not part of the indebtedness of the city of New Orleans, or that such language could possibly be strained to mean that the legislature was therefore vested with the power to coerce the city of New Orleans into the settlement of school certificates which had issued without her authority or consent by an irresponsible board or corporation for or without valuable consideration, and perhaps in direct violation of the very law whence such board could derive its only legitimate authority.

The language of the constitution can authorize no such deductions, and its proper construction would at once strike with nullity any attempt of the legislature to fasten on the city of New Orleans the obligation to settle or liquidate any claims which are not legally and unequivocally included in the term indebtedness. The very letter and the undoubted spirit of the constitution are most obviously adverse to any such proposed legislation; they go to the extent of forbidding such action even with the consent of the corporation.

In 1888 the General Assembly, in act No. 81 of that year, provided that the city council of New Orleans in making their annual budget of expenditures should include therein the amount deemed necessary to meet the expenses of the schools and keep in good repair school-houses and grounds as may seem reasonable and
167½ just, provided it should not exceed the statement of the school board to be previously made, and shall not be less than two hundred and fifty thousand dollars, whereof $75,000 is to be paid out of the reserve fund of twenty per cent. contributed by section 66 of act 20 of 1882 and act 109 of 1886, from which certain claims against the board shall be gradually paid, so as to be extinguished in 1896. The act authorized the board, if necessary, to enforce its provisions by mandamus.

The city having refused to make appropriations as directed, the board sought, by judicial proceedings, to force it to do so through mandamus. State *ex rel.* School Board *vs.* City of New Orleans, 42nd An., 94.

The city defended upon the ground that the General Assembly was attempting to amend its charter in a prohibited manner, and requiring it to pay through the board of directors a debt which it

did not owe. The district court refused the mandamus, and the Supreme Court on appeal, affirmed the judgment.

In the course of its opinion this court said: "It is elementary that a State, in the absence of constitutional prohibition, may delegate part of her political and administrative powers to municipal corporations within her borders, which then become State functionaries, and that whenever such delegation may take place the State can confer on them certain rights, which she may subsequently extend, abridge, or withdraw, as may seem just and advisable, but without impairing the obligation of contracts. This privilege of delegation is essential in the very nature of things, as otherwise the local administration necessary for public good would be an impossibility in consequence of the practical inability of the State general government to well provide by itself for the regulation of administrative matters on numerous important details in the different parts of the State.

168 "The organic law may, however, check the incidental rights of the legislature, so that when constitutional restrictions have been imposed the limitation is paramount and the legislature is impotent.

"Indeed, it is a question settled beyond the possibility of reasonable doubt, and which needs no reference to authorities to be verified, that the supremacy of the legislature over a municipal corporation, in many respects, is restrainable by qualifications placed by the constitution in terms or by fair implication.

"It is as clear that a legislature can no more transgress a State constitution than that a convention can violate the Federal Constitution, than that a municipal corporation can override its charter or valid laws affecting it and the Federal or State constitution.

* * * * * * *

"Although under an express constitutional provision the legislature has authority to cancel its charter and remit its inhabitants to another form of government (article 254), that body has no right to compel its representatives, by whatever name under its actual or under an eventual form of government, to do that which parochial or municipal corporations cannot be forced to do; so that if by the terms of the constitution, or fair implication from them, it appears that the legislature has no right to compel a municipal corporation to do that which the constitution says the legislature may authorize it to do, and if the legislature undertakes to go beyond its power of authorization, its action is nugatory."

In State *ex rel.* Town of Mansfield *vs.* Police Jury of De Soto Parish, 47 An., 1244, we had occasion to examine into this same question as to the power of control of the General Assembly over the powers of taxation, the actions, and the funds of a municipal corporation, in view of constitutional restrictions and limitations, and reached the same conclusions which had been reached in 42nd Ann., 94, by our predecessors.

Under the principles announced in the cases cited the un-

169 paid salaries of school teachers in the public schools of the city of New Orleans for the years 1880, 1881, 1882, 1883, and

1884 were not "debts" of the city of New Orleans at their origin, and could not be made so by mere legislative authority.

Their status in this respect remained unchanged up to the amendment of the constitution of 1879 adopted by the people of the State, which authorized and empowered, but did not compel the city of New Orleans to examine into and assume the payment of the claims of teachers for these particular years.

The vote of the people of New Orleans on the adoption of that amendment was 34,366 votes for and 599 votes against the same.

The effect of the adoption of that amendment was not to constitute those claims *ipso facto* "debts" of the city. The city only became committed to payment of the same by its subsequent voluntary act.

The amendment designated no time nor method nor means for the payment of these claims, if and when assumed.

The indebtedness of the city covered by act No. 110 of 1890, which the amendment "recognized and confirmed in all its parts," for the funding and payment of which the legislature was therein providing through bonds not to exceed ten millions in amount, was the then existing "valid outstanding bonds of the city of New Orleans, including the bond certificates or bonds issued under the act No. 58 of 1892 and judgments then rendered or thereafter to be rendered against the city on floating-debt claims prior to 1879, entitled to be funded under act No. 67 of 1884." The funding or payment of the unpaid salaries for the years 1880, 1881, 1882, 1883, and 1884 of public school teachers was evidently not contemplated by this act. The debts to be funded, and for which provision for payment through bonds was therein made, were specifically enumerated, and the taxes authorized and directed to be levied by
170 the act were dedicated and devoted, especially and primarily, to the satisfaction of those particular debts as under a contract obligation.

The surplus of the one per cent. tax referred to in the act was the surplus after the payment of all the interest on said constitutional bonds and bonds not retired and the payment of the annual allotments of the premium bonds and premiums extant in the hands of holders, and after making provision for a sinking fund at such time and of such amount as the legislature prescribed. This surplus was authorized to be disposed of by the legislature.

The legislature disposed of it in the 8th section of act 110 of 1890.

After declaring in what way the one per cent. tax should, each year, be primarily disposed of, the General Assembly used the following language: "After making in each year the provision above required, and after deducting the expenses incurred by said board, and after paying any deficiencies in the interest fund of any previous years, one half of the surplus should be passed to the credit of a special fund to be disposed of as disposed of later in the act, and the other half of said surplus should be paid over to the school board of the city in addition to any other funds appropriated by said city out of other funds to be used in the maintenance and support of the public schools in said city."

The disposition of the permanent improvement fund, which the 8th section declared was to be made "later in the act," was made in its 10th section.

The General Assembly had, as we have seen, by its act 114 of 1896, given special direction as to the permanent improvement fund, ordering it to be used for city drainage. It had organized a drainage commission to take charge of that subject and for
171 the purpose of raising funds for the purpose of doing the work speedily and on an extensive scale; had given power to the commission to issue and dispose of its negotiable notes to an amount of five million of dollars, and that portion of the funds in the hands of the board of liquidation accruing to public works, under sections 6 and 10 of act 110 of 1890, had been by it dedicated and appropriated as under a contract obligation for the payment of these bonds.

The drainage commission duly organized and at the time of the adoption of the constitution it had created obligations to a large amount, payable out of the surplus.

We do not understand it to be claimed that the holders of claims for unpaid salaries for the years 1880, 1881, 1882, 1883, and 1884 of teachers in the public schools of New Orleans were entitled to have their claims funded or paid under the act of 1890, but that their pretensions rest exclusively upon the effective force of articles 315, 316, and 317 of the constitution of 1898, which effective force the defendants question.

In discussing this matter we have to deal, not with the powers of the legislature, but of those of a convention not only over corporations and corporate acts, but over the legislatures and legislative acts.

In State *ex rel.* Folsom *vs.* Mayor, etc. (32nd Ann., 714), this court said:

"A constitution framed by a convention of the people, especially after having been submitted to and ratified by a vote of the people, is the ultimate expression of the will of the sovereignty itself. Its provisions may control with plenary power all private and social rights and all existing laws and institutions, and may even violate the most fundamental rules of justice, provided only they do not conflict with the provisions of the Constitution of the United
172 States, which with regard to the subjects controlled by them and to those alone form the paramount law of the land. No court has the right to question the validity of any provision of a State constitution, however unwise, impolitic, or unjust it may be, upon any other ground whatever than that it violates the Constitution of the United States (Cooley on Constitutional Limitations, page 34).

"It follows, therefore, that the provision of the Constitution of 1879 must have full force against all persons and against all rights, except so far as its operation is restrained by the Constitution of the United States."

The court said: "It was useless to discuss limitations upon the powers of the legislature imposed by the constitution of 1868, be-

cause those limitations had no force over the power of the convention."

This last statement was made, of course, with reference to matters not controlled by the provisions of the Constitution of the United States.

The application of these principles to the matters presented to us in this case confine our enquiries to a very narrow range. Are the provisions of articles 315, 316, and 317 of the constitution violative of any of the provisions of the Constitution of the United States?

It is claimed they violate the obligations of contracts, and therefore should not be enforced.

The first point to which we direct our attention is as to the power and extent of the power of the convention over the subject of the drainage of the city of New Orleans or of matters falling under the term "permanent public improvement." Was there anything in the situation of affairs when the convention met which had conferred upon New Orleans, as a city, an absolute vested right to determine for itself for the future, free from all legislative
173 constitutional control, the extent to which permanent improvements should be made within its limits, the selection of the objects of permanent improvement, or the amounts to be expended for that purpose? Unquestionably not.

The convention would have had the right to have ordered the city, as such, to have desisted from improvements of a particular kind, either permanently or for a limited time, with the privilege of continuing later on, or to alter the character or kind of improvements or the amount which should be expended for the same.

The corporation would in vain urge that the course pursued was detrimental to its interests; that it would be checked in its progress; that the public health would be impaired; it would be forced to yield to a superior power legally controlling these matters, however disadvantageously the power might be exercised.

Neither the city nor the drainage commission could legally object that the extent or scope of the system of permanent improvement would be restricted by the withdrawal of funds needed to make that system complete or successful.

The work could have been stopped at any time, though the rights of contract creditors as they existed at the date of the action of the convention could not have been by it impaired.

Our examination on this branch of the case as to the effect of enforcing articles 315, 316, and 317 of the constitution will go no further than to see whether contract creditors having rights upon the permanent improvement fund would be impaired or not.

Defendants assume that the mere fact that constitutional bonds should be sold for the purpose of paying the certificates held by relators or should be given in exchange for those certificates would of necessity entitle the holders of such bonds to prime the holders of permanent improvement bonds, bonds drawn against the
174 "surplus" of the one per cent. tax dedicated to permanent public improvements, and also to necessarily come in on a footing of equality with all the other holders of consolidated bonds,

and they maintain if this be true the rights of contract creditors under the funding act would be impaired.

Relators, on the other hand, insist that the only portion of the one per cent. tax ever set aside for permanent public improvements was one-half of the surplus produced by the tax which would remain, after having retained in the hands of the board of liquidation enough to meet the payment in full of a ten-million issue of consolidated bonds, and that therefore it would be legally immaterial to creditors basing contracts on such surplus to whom the other portion of the fund would go. It would be enough for them to know it would not go to them, and relators urge that other holders of consolidated bonds would have no ground of complaint; that they should be permitted to share equally with them from the tax fund, as they had accepted their bonds on the expected basis of coming in concurrence with an issue of ten millions of bonds; that they might be interested that the limit as to the amount of the bonds should not be passed, but they were without legal interest when the limit should not have been passed as to who should be the holders of the bonds sharing the fund with them.

In support of this last position they rely upon the decision of the Supreme Court of the United States in Board of Liquidation *vs.* McComb (92 U. S. Reports, 531). If the collection of the one per cent. tax would suffice to pay each year the holders of consolidated bonds issued in taking up or retiring the bonds and claims, such as were provided for by the act No. 110 of 1890 and the constitutional amendment of 1892, without any conflict with the bonds ordered to be sold by article 317 of the constitution of 1898, the former, of course, would have no cause of complaint; but if from any cause the amount of the tax collected would be insufficient for that purpose, we do not think the holders of these latter bonds could force the former to prorate with them the amount in hand.

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This condition of things is not existing; it may never arise, and, should it arise, the board of liquidation would doubtless have taken steps to distinguish bonds issued under article 317 from those which had been otherwise issued.

It does not necessarily follow that all claims payable out of a particular tax should stand on a footing of perfect equality as to payment. If from any legal existing cause there would be priority of right, there would be priority of payment. We have an example of this in the matter of the priority or preference payment of the salaries of the constitutional officers of the State over warrants for ordinary claims, though all are payable out of the general fund (State *ex rel.* Collins *vs.* Burke, treas., 32nd Ann., 1213) and it has been held that amounts needed for the alimony of the city have to be paid out before those for other purposes are paid.

(Lucas E. Moore *vs.* City of New Orleans, 32nd Ann., 729; Saloy *vs.* City, 33rd Ann., 79.)

So, also, it sometimes happens from special circumstances that the holder of one or more of the same series of notes may hold rights subordinated to those of the holders of the others.

If there should be in the future any actual conflict of interests, the board of liquidation and the parties interested will doubtless have taken steps to be able to protect themselves.

We do not take the same view that relators do as to what was meant by and intended to be conveyed by the "surplus" referred to by act 110 of 1890, act No. 114 of 1896, and the constitutional amendment of 1892. We think the law-makers intended
176 that any portion of the one per cent. tax provided for in act 110, not needed for the payment or retirement of the particular bonds or claims therein specially provided for as to payment or retirement, should constitute the surplus of the tax; that it was not contemplated when these laws were passed or the amendment of 1892 adopted that in order to exhaust any portion of the ten millions of dollars originally expected to be needed to pay the existing bonds and the existing claims therein specially enumerated which might not be necessary for that purpose new classes of claims should or would be thrown under the provisions of the original funding law.

We think the "surplus" was intended to connect at once and follow immediately behind as to its appropriation the amount beyond that actually needed to carry out the plan as originally mapped out and planned. The surplus was provisionally ascertained each year in a manner particularly specified to be readjusted; the next in a manner also particularly specified. All the surroundings and circumstances connected with the legislation negative the idea that the surplus mentioned was to be only any surplus over ten millions of dollars which might result from the collection of the one per cent. tax.

We think the board of liquidation, the drainage commissioners, and those with whom they contracted were justified in placing that interpretation upon the legislation, and that contract rights based upon the same should be protected from impairment. The convention, while ordering the payment of the certificates held by the relators through sales of consolidated bonds, could not confer upon the holders of such bonds rights which in any way would come in competition with the contract rights of creditors existing against the tax at the time of the adoption of the constitution. Though there was no mention in the constitution as to the rank of the bonds
177 which would be issued to take up relators' certificates, that rank resulted from legally existing conditions, which could not be constitutionally interfered with.

There is no constitutional objection to the convention's ordering the board of liquidation to sell bonds to take up the relators' certificates, but there would be constitutional objection to be urged if the effect of the issuing of such bonds would be to place the holders thereof on an equality with the holders of bonds issued to take up the bonds and claims provided for as to their funding and payment by act No. 110 of 1890, act No. 114 of 1896, and the constitutional amendment of 1892.

Duperier *vs.* Police Jury, 31st Ann., 710; Shields *vs.* Pipes, 31st Ann., 765.

The consolidated bonds which relators seek to have issued upon their prayer will really be drawn against (when issued) any surplus which will remain of the one per cent. tax after the payment of all the bonds issued and to be issued by the board of liquidation under act No. 110 of 1890 and the constitutional amendment of 1892 in order to fund and retire and pay the bonds and debts therein specially enumerated, and also the bonds issued and to be issued by the drainage commission under the provisions and authority of act No. 114 of 1896 to pay the contracts existing at the date of the adoption of the constitution, which were entered into upon the faith of the surplus directed to be set aside to the credit of the permanent improvement fund by the act No. 110 of 1890, act No. 114 of 1896, and the constitutional amendment of 1892.

The effect of this will be to subordinate the rights of holders of bonds issued by the drainage commission to pay for contracts entered into after the adoption of the constitution of 1898 to
178 those of the holders of consolidated bonds to be issued under the orders of article 317 of the constitution of 1898. This may check and impede the work of public improvement, but it is a matter which we cannot control.

For the reasons assigned it is hereby ordered, adjudged, and decreed that the judgment of the district court be, and the same is hereby, affirmed, except as to the interest allowed, which interest is hereby reduced from five to four per cent.; costs of appeal to be borne by appellees.

Mr. Justice Monroe takes no part, as he was not a member of the court when the case was submitted.

179 *Final Judgment.*

UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, *May* 1, 1899.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, associate justices.

STATE *ex Rel.* Mrs. L. B. WILDER ET ALII. }
vs. } No. 13034.
BOARD OF LIQUIDATION CITY DEBT. }

On appeal from the civil district court for the parish of Orleans.

For the reasons assigned it is hereby ordered, adjudged, and decreed that the judgment of the district court be, and the same is hereby, affirmed, except as to the interest allowed, which interest is hereby reduced from five to four per cent.; costs of appeal to be borne by appellees.

(Mr. Justice Monroe takes no part, as he was not a member of this court when the case was submitted.)

Petition by Intervenor for Rehearing.

Supreme Court of Louisiana.

STATE *ex Rel.* MISS L. B. WILDER ET ALS.
vs.
BOARD OF LIQUIDATION OF CITY DEBT ET ALS. } No. 13034.

To the honorable the chief justice and associate judges of the supreme court of Louisiana:

The petition of The Drainage Commission of New Orleans,
180 intervenor in this cause and one of the appellants, respectfully represents that, as it is advised and believes, there is error to its prejudice in the judgment or decree of your honorable court pronounced in this cause May 1, 1899, and it prays that a rehearing may be granted in this cause.

I.

Your petitioners, intervenor as aforesaid, prays leave to adopt and submit to the court the assignment of errors made by The Board of Liquidation of the City Debt of New Orleans, the respondent in this cause, in its petition for a rehearing, also filed herein, so far as the same apply to the position of this intervenor, *mutatis mutandis*, and that your honors will so consider the same.

II.

Petitioner respectfully submits that your honors have erred in your decree, in this:

That your honors have maintained and upheld and declared to be well founded in law all the pleas, defenses, grounds, and reasons assigned and set up by intervenor in its pleadings, and yet you have affirmed the judgment of the lower court, which declared that the intervenor had no interest in the controversy, dismissed its intervention, and proceeded to grant the relief demanded by the relators as if all the said pleas, defenses, grounds, and reasons had no force or validity.

III.

That in the opinion pronounced for the court by his honor the chief justice the right of this intervenor to come in and assert the points which it asserted and the validity of those points have been, to all intents and purposes, sustained, and yet this opinion is followed by the decree of which we now complain. This decree affirms the decree of the lower court, except in a subordinate
181 matter of the rate of interest, and is a different decree from that which could be justified by the said opinion. The relators asked for the issue and sale of certain bonds, manifestly to be of equal dignity and value as those already issued under act of 1890

and known as constitutional four per cent. bonds of New Orleans, and the lower judge by his decree recognized their right to this relief and granted the same without any restriction. But the opinion of this court declares that such bonds to be issued in this proceeding should be something different and should be subordinate to bonds issued or contracts existing prior to May 12, 1898, when the present constitution went into effect. It is respectfully submitted that to affirm the decree below is an error which ought to be corrected. The contracts made by the drainage commission on the faith of its dedicated fund were made prior to May 12, 1898, and the bonds of the drainage commission set forth in the record were prepared and issued to meet these contracts and were actually sold before the city of New Orleans became a debtor to the relators by assuming their claims—say in August, 1898.

Under the elementary principles of our practice, it is submitted that two propositions at least are correct.

(*a.*) That a relator in the mandamus cannot have the relief demanded unless the granting of such relief is merely the enforcement of a plain ministerial duty precisely indicated and precisely demanded, and there is no room for equitable relief of some other kind, which could only be had by an ordinary proceeding.

(*b.*) On appeal our supreme court should pronounce a judgment conforming to the reasons or motifs of its opinion. If such motifs agree with the views of the lower judge, the result would be an absolute affirmance. If these motifs demand a modification or reversal, or both, the decree of the supreme court should take that form.

182 It would seem to follow necessarily that the relators, not being entitled to what they demanded and what the lower judge gave them, cannot have the decree of the lower judge affirmed. Especially should this be true in the matter of public securities, concerning whose future and whose rights there should be no opportunity for controversy.

IV.

In a matter so important and of such public interest and so deeply affecting the credit of contracts made and securities issued by the city of New Orleans and by the drainage commission the attention of your honors is earnestly called to the familiar doctrine of the civil law and of our own decisions that all judgments are interpreted by the pleadings and by the language of the decree or decrees themselves and not by the motifs or reasons given in the opinion or opinions in the case.

This elementary doctrine becomes very important for the future of this controversy and the future of securities which will have to be issued if your honors' decree remains undisturbed. If it remains undisturbed, it would go down to the lower court to be executed, and the relators and the lower judge would at once declare that the judgment of the lower court had been affirmed and the relators were entitled to have the bonds issued in accordance with the pleadings and with the affirmed judgment without regard to

any of the motifs found in the elaborate opinion of the learned chief justice. If the defendant should tender bonds to be subordinate to the bonds and contracts existing prior to May 12, 1898, they might well be held to be in contempt. The doctrine to which we now allude has been consecrated in many decisions, and was argued with great learning by the late Mr. Bradford and the late Mr. Randell Hunt in the case of Slocomb against Lizardi,
183 21 An., 355–358. Mr. Marcade, vol. 5, page 155, as quoted by the court, 21 Ann., 358, says (we translate): "It is perfectly understood that it is only in the dispositive (decretal) portion of a judgment and not in its motifs (or reasons) that the thing adjudged is found."

It seems plain, therefore, that the decree pronounced by your honors is incorrect and may work a great and irreparable injury. The motifs or reasons of the opinion are not carried out in the decree, and it seems manifest that the decree ought to be set aside and, in any event, a decree pronounced which would represent the doctrines set forth in the opinion. In no other way, under the doctrine of the thing adjudged, can the views expressed in your honors' opinion be carried into effect.

V.

But, apart from this, petitioner submits with great respect that its right to intervene in this cause is plain; that the judgment of the lower court to the contrary is erroneous; that the relators have no legal and constitutional right to the relief they demanded in their petition; that the judgment of the lower court granting such relief was in violation of the contract clause of the Constitution of the United States and of the 14th article of amendment, as specially set up in the pleadings in this cause; that the affirmance of the decree of the lower court by the decree of your honors is, for the same reasons, erroneous; that the relators, not being entitled to the specific relief which they demanded, cannot have some other relief; that the judgment of the lower court ought to be reversed and the relators dismissed, and that, in any event, no such decree as that which has been rendered by your honors can be logically or lawfully predicated on the findings of fact and law set forth in the opinion.

Petitioner therefore prays for a rehearing of this case, and for an oral argument, and for proper time to file a brief in support
184 of this petition, and for general relief.

(Signed) HOWE, SPENCER & COCKE,
Att'ys for Intervenor.

(Endorsed:) No. 13034. Supreme court. State *ex rel.* Wilder *vs.* Board of Liquidation. Petition by intervenor for rehearing. Filed May 15th, 1899. (Signed) Paul E. Mortimer, dep. clerk.

Petition of the Board of Liquidation for a Rehearing.

Supreme Court of Louisiana.

STATE *ex Rel.* MISS L. B. WILDER ET AL.
versus
THE BOARD OF LIQUIDATION OF THE CITY DEBT ET AL. } No. 13034.

To the honorables the chief justice and the associate justices of the supreme court of Louisiana:

The petition of The Board of Liquidation of the City Debt, one of the defendants and appellants herein, respectfully prays that the court grant a rehearing in this case, and as grounds for this application assigns the following errors in the decree of the court:

I.

That by article No. 317, of the State constitution of 1898, petitioner is directed to sell a sufficient number of constitutional bonds issued under the act of the General Assembly, No. 110, of 1890, and the constitutional amendment of 1892, as would realize a sum of money sufficient to pay and discharge such obligations of the board of school directors for the parish of Orleans, for unpaid salaries of school teachers and portresses, and others, mentioned in article 315, of the constitution, as might be assumed, after examination by the city of New Orleans, under and by virtue of articles 315 and 316, of the constitution. That the prayer of relators' petition was for a mandamus, to compel petitioner to provide the requisite funds to pay their claims which had been examined and approved by the city of New Orleans, under said articles 315 and 316, by the sale of a sufficient number of constitutional bonds of the said city, of the issue provided for in act 110, of the General Assembly of 1890, and the amendment to the constitution submitted to the people by said act.

That in answer to the alternative writ of mandamus obtained upon relators' petition, for cause, why the relief prayed for, should not be granted, petitioner in answer and return pleaded:

That said article 317 of the constitution was in contravention of sec. 10, art. 1, and of the fourteenth amendment, of the Constitution of the United States, in that it impaired the obligation of certain contracts created prior to the adoption of the State constitution of 1898, and deprived certain parties, whose rights were by law confided to the protection of your petitioner, of their property, without due process of law.

That by the express terms of said act 110, of 1890, and the said constitutional amendment of 1892, the constitutional bonds thereby authorized can be issued for certain purposes, therein designated and no others, namely: to retire the then outstanding valid bonds of the city of New Orleans, and to pay and retire judgments then, or thereafter to be rendered against the city, entitled to be funded,

under the act of the General Assembly, 67, 1884; that further, by sec. 3, of said act 110, it was declared that the proceeds of the sale of said constitutional bonds should be devoted solely and exclusively to the said two purposes, for which the said amendment created the bonds; that both the said act and the said amendment formed a contract, or contracts, by which the rights of all persons entitled thereunder to receive proceeds of sale of any of said bonds were protected, and this was declared in terms by both the act and the amendment.

That to issue and sell constitutional bonds for any purposes other than those named in the said act and constitutional amendment, was an impairment of the contracts of all persons having any rights under either the amendment or the act, or both; that to sell constitutional bonds, as directed by article 317, of the State constitution, and for the purposes therein named, would be to violate and disregard the limitations and prohibitions set out in the said act and constitutional amendment; that your petitioner, in its answer, set out specifically the contracts made under authority of the said act and amendment, and the legislation, ancillary and in the execution thereof, and the classes of persons in whose favor there existed contract rights thereunder, concerning which your petitioner set up, that there would be an impairment.

That this honorable court, in its opinion, has maintained and upheld, and declared to be well founded in law, all the pleas, defences, grounds and reasons assigned and set up by petitioner, in its answer, why it could not, and refused to, comply with the direction of said article 317 of the State constitution, and the prayer of relators' petition.

That the views of this honorable court as to the right and duty of petitioner to refuse compliance with article 317, and with the prayer of relators' petition, the former, as adopted by the constitutional convention, and the latter as found in the petition, being in exact accord with those of defendant, it is but in simple and fair
184a conformity with justice that the judgment of the district court, which was against the petitioner, rejecting all of the defences raised by it, should not be affirmed, but reversed, by this honorable court.

II.

That by the opinion herein of his honor the chief justice, marked as it is by evidence of the surpassing care and serious consideration bestowed upon this case, the correctness of every proposition advanced by this defendant, in its answer to relators' demand, is fully and unequivocally affirmed. The opinion declares, that defendant was right in refusing, and that it was its duty to refuse, the issuance and sale of constitutional bonds which would, in any form, or in any manner, violate or impair the obligation of any of the contracts which it was charged by defendant, in its answer and return, would be so violated and impaired by a compliance with said article 317. The conclusion of the court is, that your petitioner shall issue and sell said bonds, but they are to be subordinate to every bond issued,

or contract created, or growing out of the said act 110, 1890, or said constitutional amendment of 1892, which came into existence prior to May 12, 1898, the date when the present constitution went into effect. Of this conclusion, petitioner makes no complaint, but such was not the course enjoined upon it by article 317, nor was this the relief that was sought by relators' suit; that no demand of this character, or any of a like nature, has ever been made upon your petitioner, and, hence, never been refused by it.

That the judgment of the district court, which is here appealed from, does not order this defendant to do, what the opinion of this court declares that it should do; that the judgment of this honorable court therefore should be a different judgment from that rendered by the district court; that if the latter be obeyed, which it must be, if affirmed by this court, your petitioner will be compelled to do what this court has declared it is its right and duty, to refuse to do; namely, to issue bonds under act 110, of 1890, and the constitutional amendment of 1892, without condition or restriction as to their effect, upon contract rights created and existing prior to the adoption of the said constitution of 1898; that, therefore, the decree of this honorable court, which is an unconditional affirmance of the judgment of the lower court, should be changed, so as to be in accordance with the views expressed in this court's opinion; this would necessarily require a reversal, instead of an affirmance of the judgment of the lower court, and the rendition by your honors, of a new and original judgment, which, if effect be given to the views expressed in the opinion, is the judgment which should have been rendered by the district court, instead of the one which, as a matter of fact, it did render; that the decree of this honorable court is not in accord, but, on the contrary, is irreconcilably inconsistent with the views expressed in its opinion, the obvious and necessary result of which would be the reversal, and not the affirmance of the judgment of the lower court.

Your petitioner suggests that the rule announced by article 905, of the Code of Practice, that when the Supreme Court reverses the judgment of an inferior court, it shall pronounce on the case, the judgment which the lower court should have rendered, is the rule to be followed here; this would be a judgment, not absolute in its terms, but conditioned upon the non-violation or non-impairment, of any rights or contracts which it is charged, and this court has decided, would be violated and impaired by a compliance with the direction of article 317, of the State constitution, and the prayer of relators' petition.

III.

While the complaint from your petitioner, that the only judgment which could be rendered in the present case, would be one awarding to the relators the precise relief they seek, or one absolutely rejecting their demands, would be well founded, on account of the character of the question involved here, which concerns large and important rights and interests of a public character, petitioner abstains from making one of the grounds of

this application, the well-settled rule, that in a mandamus suit the relator can be awarded no relief which differs in the slightest degree, from the precise one which the suit is brought to obtain; the court having concluded, for reasons as to which petitioner raises no question, to allow relators a right differing from that conferred by art. 317 of the constitution, and differing also from that which relators sought, petitioner deems it not improper to ask the instructions of the court, in case of a probable difficulty of executing the duty which will be imposed by the judgment of this court, even when there is incorporated in it, the conditions and limitations set out in its opinion.

It is declared in the court's opinion, that the bonds to be issued and sold by petitioner shall be controlled by conditions and limitations of right, which are not found in art. 317 of the said constitution; these bonds, if issued under art. 317, would be concurrent with, and equal in every respect to, all other bonds issued or to be issued under the act of 1890, and constitutional amendment of 1892.

The opinion declares, however, that the bonds to be issued and sold, to obtain funds to discharge relators' claims, are to be subordinate to all bonds issued, or to be issued, rights or contracts conferred by, or arising under the act and the amendment, which were created prior to the adoption of the constitution of 1898; this would create a class of bonds inferior in character to all others issued, or to be issued; and in order that notice of the difference between the two classes of bonds be given, your honors say (p. 10, opinion):

"The board of liquidation would doubtless have taken
184*b* steps to distinguish bonds issued under art. 317, from those which have been otherwise issued."

By the terms of sec. 2, of the act 110 of 1890, it is declared that the constitutional bonds are to be sold at the highest premium obtainable, and that no sale shall be made at less than par. Petitioner construes this prohibition as applying to the bonds, which, in the extract from the opinion just made, are termed those "otherwise issued;" namely, the bonds to be sold in order to raise funds to pay relators' claims.

Petitioner respectfully requests that the court define the status of the bonds to be issued therein, with reference to the prohibition against the sale of any bond at less than par, particularly whether or not petitioner is at liberty to disregard the said prohibition in the instant case, or whether it must be observed.

IV.

Petitioner is charged with the execution of delicate and important duties of a public character, requiring the exercise of the highest discretion and the utmost good faith. These duties petitioner has endeavored to perform with fidelity and to the best of its ability; in the preeent case, every objection made by petitioner to the effect of art. 317 of the constitution of 1898, and every defence set up in its answer is sustained by this honorable court, and has been adopted as the basis of its opinion and undoubtedly of the decree it intended to make. The decree of the district court was the

reverse, of every proposition upon which this honorable court proceeds to judgment; the obvious and necessary result of the irreconcilable inconsistency of the views expressed by your honors, and the grounds upon which the lower court based its judgment, is the reversal of the judgment of that court; but your honors have affirmed it; the simple justice of awarding petitioner the vindication which it receives from the opinion of your honors, it is confidently believed you will at once recognize; on this ground, it is respectfully asked that your honors shape and mould your decree, in conformity with the conclusions reached, upon the merits of petitioner's defences.

The form of this decree is suggested in a brief filed in support of this application; it is simply to the effect that the decree of the district court is not affirmed, but reversed, and that your honors render here a new and original judgment, limited by all the conditions and restrictions affirmed by your opinion, which it is apparent it was your intention to award.

V.

That the decree of this court is contrary to the law and the evidence.

VI.

In view of the serious and far-reaching consequences of any decree which your honors may conclude to render, it is respectfully requested that on this application the court hear both relators and petitioner in an oral argument, in the course of which the attention of the counsel may be directed to such propositions, as to which the court may specially desire argument.

Wherefore, petitioner prays that the court allow an oral argument of this application, and that in due course a rehearing be granted, or that the decree of your honors be changed or modified so as to conform with the views expressed in your opinion, and for general relief.

Endorsed: No. 13034. Supreme court. State *ex rel.* Miss L. B. Wilder *et al. versus* The Board of Liquidation of the City Debt *et al.* Petition of the board of liquidation for a rehearing. Branch K. Miller, attorney. Filed May 15th, 1899. (Signed) Paul E. Mortimer, deputy clerk.

185 *Motion and Order for Time on the Part of the Board of Liquidation.*

Supreme Court.

STATE *ex Rel.* MISS L. B. WILDER ET AL.
vs.
THE BOARD OF LIQUIDATION OF THE CITY DEBT ET AL. } No. 13034.

On motion of Branch K. Miller, attorney for appellant The Board of Liquidation of the City Debt, and on suggesting that the mover

had filed herein a petition for a rehearing, and on further suggesting that mover's brief in support of said petition is in course of being printed, and that the printing of same is not yet completed—

It is ordered that the said Board of Liquidation of the City Debt be allowed a delay of two days from and after May 15th, 1899, within which to file its brief in support of its petition for a rehearing.

(Endorsed:) No. 13034. Supreme court. State *ex rel.* Miss L. B. Wilder *et al. vs.* The Board of Liquidation of the City Debt *et al.* Motion for delay. Entered & filed May 15, 1899. (Signed) T. McC. Hyman, clerk.

Motion and Order for Time on the Part of Intervenor.

Supreme Court.

STATE *ex Rel.* WILDER, &c., *vs.* BOARD OF LIQUIDATION ET AL. } No. 13034.

On petition for rehearing.

On motion of W. W. Howe, for intervenor, The Drainage Commission of New Orleans, and suggesting that it has duly filed its petition for a rehearing in this cause—

Ordered that it have until May 20, 1899, to file a brief in
186 support of said application.

Endorsed: No. 13034. State *ex rel.* Wilder, &c., *vs.* Board, &c. Order for time, &c. Howe, of counsel. Entered & filed May 15, 1899. (Signed) T. McC. Hyman, clerk.

Opinion on Application for Rehearing.

UNITED STATES OF AMERICA, *State of Louisiana.*

Supreme Court of the State of Louisiana.

NEW ORLEANS, *June* 30, 1899.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Newton C. Blanchard, and Frank A. Monroe, associate justices.

NEW ORLEANS, *June* 30, 1899.

His honor the chief justice pronounced the opinion and decree in the following case:

STATE *ex Rel.* MISS L. B. WILDER ET ALS.
vs.
BOARD OF LIQUIDATION CITY DEBT ET AL. } No. 13034.

On application for rehearing.

An examination of this cause on the application for a rehearing has brought to our notice that in affirming the judgment of the district court we affirmed that portion of the same which dismissed the intervention of the Drainage Commission of New Orleans as being without any interest in the cause. Such was not our intention.

We think the Drainage Commission of New Orleans had sufficient interest in the matters involved in the litigation to intervene in the cause.

187 A re-examination of the cause has brought us to the conviction that our judgment is erroneous, in so far as it accorded interest to the relators upon their certificates.

For the reasons assigned, it is ordered, adjudged, and decreed that our former judgment be amended by setting aside that portion of the same by which interest at four per cent. is accorded to the relators, and by which the judgment of the district court is affirmed in dismissing the intervention of the drainage commission.

It is now ordered, adjudged, and decreed that the judgment of the district court, in so far as it dismisses the intervention of the Drainage Commission of New Orleans as having no interest in the cause, and in so far as it recognizes the right of the relators to interest upon their certificates, be annulled, avoided, and reversed, and it is now ordered, adjudged, and decreed that, recognizing the right of the said drainage commission to intervene herein, its intervention be, and it is hereby, reinstated; and it is further ordered and decreed that that portion of relators' present demand by which they pray that they be recognized as entitled and accorded interest upon their certificates be, and the same is hereby, rejected.

It is further ordered, adjudged, and decreed that the judgment of the district court, except as herein altered and amended, be affirmed, and our own judgment, except in so far as herein altered and amended, remain undisturbed.

Monroe, J., takes no part.

Final Judgment.

NEW ORLEANS, FRIDAY, *June* 30, 1899.

The court was duly opened, pursuant to adjournment.

Present: Their Honors Francis T. Nicholls, chief justice;

188 Lynn B. Watkins, Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, associate justices.

STATE *ex Rel.* MISS L. B. WILDER ET ALS.
vs.
BOARD OF LIQUIDATION OF THE CITY DEBT ET AL. } No. 13034.

(On application for rehearing.)

For the reasons assigned, it is ordered, adjudged, and decreed that our former judgment be amended by setting aside that portion of the same by which interest at four per cent. is accorded to the relators and by which the judgment of the district court is affirmed in dismissing the intervention of the drainage commission.

It is now ordered, adjudged, and decreed that the judgment of the district court, in so far as it dismisses the intervention of the Drainage Commission of New Orleans as having no interest in the cause, and in so far as it recognizes the right of the relators to interest upon their certificates, be annulled, avoided, and reversed, and it is now ordered, adjudged, and decreed that, recognizing the right of the said drainage commission to intervene herein, its intervention be, and it is hereby, reinstated; and it is further ordered and decreed that that portion of relators' present demand by which they pray that they be recognized as entitled and accorded interest upon their certificates be, and the same is hereby, rejected.

It is further ordered, adjudged, and decreed that the judgment of the district court, except as herein altered and amended, be affirmed, and our own judgment, except in so far as herein altered and amended, remain undisturbed.

Monroe, J., takes no part.

Rehearing Refused.

FRIDAY, *June 30th*, 1899.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice;
189 Lynn B. Watkins, Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, associate justices.

STATE *ex Rel.* MISS L. B. WILDER ET ALS.
vs.
BOARD OF LIQUIDATION CITY DEBT ET AL. } No. 13034.

By the COURT: It is ordered that the rehearing applied for in this case be refused.

Notification.

Cable address, "Knox."

Branch K. Miller, attorney-at-law, 316 Carondelet street.

Office hours: 9 to 10.30 a. m. and 3 to 4.30 p. m.
Telephone 1345.

NEW ORLEANS, *July* 5, 1899.

R. M. Walmsley, Esq., president Drainage Commission of New Orleans, New Orleans, La.

DEAR SIR: I hereby give you notice that The Board of Liquidation of the City Debt, defendant, in State *ex rel.* Miss L. B. Wilder *et al. vs.* The Board of Liquidation of the City Debt, Drainage Commission of New Orleans, intervenor, No. 13034 of the docket of the supreme court of Louisiana, will, on this day, present to the chief justice of the supreme court of the State of Louisiana a petition for a writ of error to remove the said cause to the Supreme Court of the United States, to the end that the judgment or decree of the said court may be reviewed by the Supreme Court of the United States.

The Drainage Commission is a party to said suit by intervention. I send this to request that you join in said writ of error, and beg to ask that you please notify me whether or not the drainage commission will join in said writ.

Yours very respectfully,

BRANCH K. MILLER,
Attorney for Board of Liquidation of the City Debt.

190 *Reply of Drainage Commission.*

NEW ORLEANS, *July* 5, 1899.

Branch K. Miller, Esquire, attorney for Board of Liquidation of the City Debt, New Orleans, La.

DEAR SIR: Mr. R. M. Walmsley, president of the drainage commission, has referred to us for answer your communication of this date, requesting that the commission join the board of liquidation in a writ of error and a petition therefor to remove to the Supreme Court of the United States for review the case of The State *ex rel.* Miss L. B. Wilder *et al. vs.* Board of Liquidation of the City Debt, Drainage Commission of New Orleans, intervenor, No. 13034 of the docket of the supreme court of Louisiana, and the final judgment or decree of the said court in said cause.

Replying, we beg to say that the Drainage Commission will join the Board of Liquidation as a plaintiff in error in said cause, but prefer to make its application for a writ of error by its own petition and obtain a separate writ in its own name, for this reason: We decline a literal compliance with your request to join the board of

liquidation in the writ of error which it proposes to obtain in said cause.

Respectfully,

(Signed) WM. WIRT HOWE,
" W. B. SPENCER,
CHAS. P. COCKE,
Att'ys Drainage Commission of N. O.

191 Personally appeared Branch K. Miller, who, being duly sworn, deposes and says:

That he is the regularly retained attorney of the Board of Liquidation of the City Debt and as such attorney he represents the said board as a defendant in the suit of State *ex rel.* Miss L. B. Wilder *et al. vs.* The Board of Liquidation of the City Debt, Drainage Commission of New Orleans, intervenor, No. 13034 of the docket of the supreme court of the State of Louisiana.

That on behalf of the said Board of Liquidation of the City Debt he addressed the president of the drainage commission a notice that the said Board of Liquidation of the City Debt would petition the chief justice of the supreme court of the State of Louisiana for the allowance of a writ of error in the case of State *ex rel.* Miss L. B. Wilder *et al. vs.* Board of Liquidation of the City Debt, Drainage Commission of New Orleans, intervenor, No. 13034 of the docket of the supreme court of the State of Louisiana, and the request that said drainage commission join in said writ of error and the petition for the same; that he, affiant, personally delivered the said notice and request to R. M. Walmsley, Esquire, president of the drainage commission, on this the fifth day of July, 1899, a true copy of which notice and request is attached to this affidavit as a part hereof.

That in reply to the same he received the letter of Messrs. William W. Howe, Walker B. Spencer, and Charles P. Cocke, attorneys for the said drainage commission, a true copy of which letter is attached to this affidavit as a part hereof.

(Signed) BRANCH K. MILLER.

Sworn to and subscribed before me this the fifth day of July, 1899.

(Signed) J. C. HENRIQUES,
[SEAL.] *Notary Public.*

192 *Petition of Board of Liquidation for Writ of Error.*

Supreme Court of the State of Louisiana.

STATE *ex Rel.* MISS L. B. WILDER ET AL.
vs.
BOARD OF LIQUIDATION OF THE CITY DEBT; DRAINAGE COMMISSION of New Orleans, Intervenor. } No. 13034.

To the honorable the chief justice of the supreme court of Louisiana:

The petition of The Board of Liquidation of the City Debt, defendant in the above entitled and numbered suit, respectfully shows:

That in the above entitled and numbered suit there was drawn in question the validity of article 317 of the present constitution of the State of Louisiana, adopted in the year 1898, as being repugnant to the Constitution of the United States, particularly to section 10 of article 1 and the fourteenth amendment thereof, for the reason that said article 317 impaired the obligation of certain contracts and deprived certain persons of their property without due process of law; that the decision, final judgment, and decree of this court was in favor of the validity of the said article 317.

That on the 1st day of May, 1899, this court entered judgment herein in favor of relators and against this defendant, notwithstanding its pleas and defenses that said article 317 of the constitution of the State of Louisiana adopted in 1898 was violative of the Constitution of the United States, particularly of section 10 of article 1 and the fourteenth amendment thereof.

That on the 30th day of June, 1899, this court refused to grant a rehearing of this cause upon the petition of this defendant, setting forth the various grounds therefor.

That in said decision, final judgment, and decree, and the proceedings had in this court prior thereto, certain errors were
193 committed, to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

That petitioner desires by writ of error to remove this cause to the Supreme Court of the United States, there to be reviewed, and the correctness of the said decision, final judgment or decree, and the proceedings had prior thereto be determined.

Petitioner further shows that it has notified The Drainage Commission of the City of New Orleans, intervenor herein, to appear and join in this petition and the writ of error which it seeks to obtain, and that said Drainage Commission, in answer to said notice, has declared its purpose to join defendant as a plaintiff in error herein, but, instead of joining in the writ which defendant seeks to obtain, prefers to obtain a writ of error upon its own petition and in its own name as a plaintiff in error.

All as will more fully appear by true copies of the said notice given by defendant, the reply thereto of the said drainage commission, and the affidavit of Branch K. Miller, Esquire, attorney for this defendant, showing the service of said notice, and the receipt of the reply thereto, hereto attached as a part hereof.

Wherefore defendant prays that a writ of error may issue in its behalf to the supreme court of the State of Louisiana for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

(Signed) BRANCH K. MILLER,
Attorney for Petitioner.

JULY 6TH, 1899.

I decline to issue or have issued the writ applied for, for the reason that in my opinion no Federal question is involved.

(Signed) FRANCIS T. NICHOLLS,
Chief Justice.

194 Supreme Court of the State of Louisiana.

STATE *ex Rel.* MISS L. B. WILDER ET AL.
vs.
BOARD OF LIQUIDATION OF THE CITY DEBT; DRAINAGE Commission of New Orleans, Intervenor. } No. 13034.

On this the — day of July, 1899, came the plaintiff, by its attorney, and filed herein and presented to the court its petition praying for the allowance of a writ of error to operate as a supersedeas, intended to be urged by it, praying also that a transcript of the record and proceedings and papers upon which the final judgment or decree herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may appear in the premises; on consideration whereof the said writ of error is allowed upon the defendant giving bond according to law in the sum of —, which shall operate as a supersedeas bond; and it is further ordered, pending said writ of error, that all further proceedings in this cause in this court and in the civil district court for the parish of Orleans be stayed and suspended until the final determination of said writ of error by the Supreme Court of the United States.

(Endorsed:) No. 13034. Supreme court of the State of Louisiana. State *ex rel.* Miss L. B. Wilder *et al. vs.* Board of Liquidation of the City Debt; Drainage Commission of New Orleans, intervenor. Petition. Filed July 5, 1899. (Signed) T. McC. Hyman, clerk.

Assignment of Errors.

Supreme Court of the State of Louisiana.

STATE *ex Rel.* MISS L. B. WILDER ET AL.
vs.
BOARD OF LIQUIDATION OF THE CITY DEBT; DRAINAGE Commission of New Orleans, Intervenor. } No. 13034.

195 The defendant in this cause, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers are contained in the decision, judgment, or decree of the supreme court of the State of Louisiana:

First. That by section 1 of the amendment to the constitution of the State of Louisiana proposed by act 110 of the General Assembly of said State, which proposal was approved July 8th, 1890, and which said amendment was adopted by a majority vote of the qualified electors of said State at the general election therein, held in

April, 1892, it is provided that the four per cent. constitutional bonds of the city of New Orleans thereby authorized shall be for the purpose of retiring the then outstanding valid bonds of the city of New Orleans and to retire judgments then or thereafter rendered against the said city on floating-debt claims prior to 1879 entitled to be funded under act No. 67 of the General Assembly of the State of Louisiana of 1884; that by section 3 of act No. 36 of the General Assembly of 1890, otherwise known as act No. 110 of that year, it is and was provided that all funds received by The Board of Liquidation of the City Debt, defendant herein, shall be deposited with the fiscal agent of the city of New Orleans, or, if the same be deemed not satisfactory by the said board, with a chartered depositary selected by the same, to the credit of a special fund, called the "bond-sales fund," which fund by said section it is declared shall be used solely and exclusively for the purpose of retiring by payment all of the then outstanding valid bonds of the city of New Orleans matured or subject to call, and the payment of judgment then or thereafter rendered on floating-debt claims prior to 1879 entitled to be funded under act No. 67 of 1884.

That the purposes for which said bonds were authorized
196 by said amendment are exclusive of all others, and there is no authority in law for their issuance for any other purpose or purposes than those named in the said amendment; that by the terms of section 3 of said act 36 (or 110) of 1890 the proceeds of the sale of any of said four per cent. constitutional bonds are set apart and dedicated solely and exclusively to the purposes therein named.

That article 317 of the constitution of the State of Louisiana adopted in 1898, which directs the board of liquidation to sell a sufficient number of said constitutional bonds to pay certain obligations of the board of school directors of the public schools of the parish of Orleans for unpaid salaries of school teachers, portresses, and all other legitimate claims against said school board for the years 1882, 1883, 1884, 1885, 1886, and 1887, under the conditions named in article 316 of the said constitution of the State of Louisiana, so far as the same might be assumed by the city of New Orleans, after its examination of said claims, as directed by said article, directs the issuance and sale of said constitutional bonds for purposes not designated by said constitutional amendment and by said act No. 36 (or 110) of 1890, by reason of which it is an impairment of the contracts and the rights therefrom arising, created by the said constitutional amendment and the said act.

That the contracts so violated are those in favor of the holders of all outstanding premium bonds issued by the city of New Orleans, all constitutional bonds issued or to be lawfully issued under the authority of the said amendment and the said act; those of all contractors who, up to the time the said constitution of 1898 went into effect, to wit, May 12th, 1898, had constructed works of permanent public improvement under contracts with the city of New Orleans, payable out of the surplus of the one per cent. tax authorized by the said amendment and the said act, which
197 said surplus was established and fully described in sections 8 and 10 of said act; all contracts made by the drainage

commission for drainage works, and all bonds issued by it under the acts of the General Assembly of the State of Louisiana No. 114 of 1896 and No. 63 of 1898, which, by the last-mentioned acts, are payable out of the permanent public improvement fund, composed of one-half of the said surplus of the said one per cent. tax, established and described by sections 8 and 10 of the said act No. 36 (or 110) of 1890, which said fund, by said acts No. 114 of 1896 and No. 63 of 1898, is specially set apart and dedicated for the payment and discharge of all said contracts made and of all said bonds issued by the said drainage commission.

That said acts further provide that all provisions respecting the dedication and application of funds or moneys shall constitute a contract with the holder or holders of said bonds and with each and every person or corporation which may have entered into contracts with the said drainage commission, and expressly forbid any impairment of the same.

That the judgment or decree of the supreme court of the State of Louisiana which directs the execution by this defendant of said article 317 of the constitution of the State of Louisiana of 1898 by a sale of a sufficient number of said four per cent. constitutional bonds to pay and retire the obligations of the board of school directors for the parish of Orleans which have been approved and assumed by the city of New Orleans under article 315 of said constitution impairs the obligations of the contracts created by said acts No. 36 (or 110) of 1890, No. 114 of 1896, and No. 63 of 1898, and that the said article No. 317 of the said constitution of itself, as well as interpreted by the supreme court of the State of Louisiana, and as the said court by its final judgment or decree herein has directed its execution and enforcemten, is an impairment of the obligations
198 of said contracts and deprives all persons holding rights under the same of their property without due process of law, all in violation of section 10 of article 1 and the fourteenth amendment of the Constitution of the United States.

Second. That by the terms of the said constitutional amendment and the said act No. 36 (or 110) of 1890 the payment of the yearly allotments and premiums of the premium bonds of the city of New Orleans and all charges and expenses for the carrying of the premium-bond plan of the city of New Orleans are to be paid out of the one per cent. tax authorized by the said constitutional amendment and levied by the said act, and no person has any right to participate in nor can any bond or contract be made payable out of the said one per cent. tax or any part thereof, save those expressly mentioned and so permitted by the said constitutional amendment and the said act, and it is the contract right of any person so entitled to receive any portion of said one per cent. tax to exclude from participation therein any person or contract not so permitted or entitled under the terms of said constitutional amendment and said act; that article 317 of the constitution of the State of Louisiana adopted in 1898 and the effect given same by the final judgment and decree of the supreme court of the State of Louisiana in this cause necessarily impairs the obligation of the contract with all

holders of premium bonds created and evidenced by said constitutional amendment and said act by fixing as a charge upon the said one per cent. tax the principal of and interest upon the four per cent. constitutional bonds, which this defendant is directed to issue and sell by said article 317, and also necessarily deprives all holders of said premium bonds of their property without due process of law, all in violation of section 10 of article 1 and the fourteenth amendment to the Constitution of the United States.

199 Third. That by the terms of the said constitutional amendment and the said act No. 36 (or 110) of the General Assembly of the State of Louisiana of 1890 there is no warrant or authority of law to issue and sell four per cent. constitutional bonds of the city of New Orleans for any purposes other than those set out and enumerated in the same, to wit, to pay and retire all the then outstanding valid bonds of the city of New Orleans matured, maturing, or subject to call; to pay judgments rendered against the city of New Orleans for floating-debt claims arising prior to 1879, entitled to be funded under act No. 67 of 1884; that it is the contract right of all holders of said constitutional bonds under said constitutional amendment and said act No. 36 (or 110) of 1890 to prevent the issuance and sale of said constitutional bonds for any purpose not mentioned in said constitutional amendment, and likewise to prevent any act or proceeding by which the burdens on said one per cent. tax are to be increased or charges created against the same not mentioned or authorized by said constitutional amendment and said act.

That said article 317 of the constitution of the State of Louisiana of 1898 and the effect given to it by the final judgment or decree of the supreme court of the State of Louisiana in this case is to impair the contracts in favor of all holders of said constitutional bonds created and evidenced by the said constitutional amendment and the said act.

Fourth. That all persons who made contracts with the city of New Orleans and executed the same for the construction of works of permanent public improvement the prices of which are payable out of the surplus of the one per cent. tax authorized by the said constitutional amendment and levied by said act No. 36 (or 110) of 1890, one-half of which surplus by sections 8 and 10 of said

200 act being specially dedicated to the payment and discharge of said contracts, are entitled to exclude from participation in any portion of said one per cent. tax any and all persons not entitled to participate therein by the said constitutional amendment and the said act, since any addition to the burden on said tax imposed by said amendment and said act will correspondingly diminish the surplus remaining after payment of the annual charges fixed thereon by said amendment and the said act, and thus impair the obligations of the said contracts; that said article 317 of the constitution of the State of Louisiana of 1898 and the effect given to it by the final judgment or decree of the supreme court of the State of Louisiana in this case is to impair the contracts in favor of all holders and owners of said contracts.

Fifth. That the obligations of all contracts made by the drainage commission and all bonds issued by it and sold under the aforesaid acts of 1896 and 1898, which are payable out of the permanent public improvement fund, composed of one-half of the surplus described in paragraph 4 in this assignment, are in like manner impaired by said article 317 of the State constitution of 1898, and the effect given to it by the final judgment or decree in this case, the impairment of such obligations being the same in all particulars as that set up in paragraph 4 of this assignment, as concerns all contracts for permanent public improvements made with the city of New Orleans and payable out of the surplus of the said one per cent. tax established and described in sections 8 and 10 of said act No. 36 (or 110) of 1890, the addition of the charge for principal and interest on the constitutional bonds which are directed to be sold by said article 317 of the constitution of the State of Louisiana of 1898 effecting a diminution of the said surplus out of which it is the sole and exclusive right of contractors with the said drainage commission and the holders of its bonds to be paid.

201 That said article 317 of said constitution, and the effect given to it by the final judgment or decree of the supreme court of the State of Louisiana in this case, is an impairment of the obligations of the contracts of said contractors and the holders of said bonds of the said drainage commission.

That said article 317 of the constitution of the State of Louisiana of 1898, and the effect given to it by the final judgment or decree of the supreme court of the State of Louisiana in this cause, impairs the obligation of all of the bonds and contracts heretofore set out, mentioned, and described, and deprives the holders and owners thereof of their property without due process of law, in violation of section 10, article 1, and the fourteenth amendment of the Constitution of the United States.

The supreme court of the State of Louisiana erred in giving such effect or any effect at all to said article 317; and it further erred in not rejecting the demand of the relators and dismissing their suit on these grounds: that the errors in the said final judgment and decree and the proceedings anterior thereto are those specially set out and enumerated above, and they entitled defendant to a reversal of said final judgment or decree of the supreme court of the State of Louisiana, and the rejection by this court of relator's demand.

Wherefore this defendant and plaintiff in error prays that the judgment of the said supreme court of the State of Louisiana be reversed, and such directions be given that full force and efficacy may inure to defendant by reason of the defenses set up in its answer filed in the said cause.

(Signed) BRANCH K. MILLER,
Attorney for Board of Liquidation of the City Debt, Defendant.

(Endorsed:) No. 13034. Supreme court of the State of
202 Louisiana. State *ex rel.* Miss L. B. Wilder *et al. vs.* Board of Liquidation of the City Debt; Drainage Commission of New Orleans, intervenor. Assignment of errors. Filed July 5, 1899. (Signed) T. McC. Hyman, clerk.

Petition for Writ of Error.

NEW ORLEANS, *July 5th*, 1899.

R. M. Walmsley, Esquire, president Drainage Commission of New Orleans, New Orleans, La.

DEAR SIR: I hereby give you notice that The Board of Liquidation of the City Debt, defendant in State *ex rel.* Miss L. B. Wilder *et al. vs.* The Board of Liquidation of the City Debt, Drainage Commission of New Orleans, intervenor, No. 13034 of the docket of the supreme court of Louisiana will on this day present to the chief justice of the supreme court of the State of Louisiana a petition for a writ of error to remove the said cause to the Supreme Court of the United States, to the end that the judgment or decree of the said court may be reviewed by the Supreme Court of the United States.

The Drainage Commission is a party to the said suit by intervention. I send this to request that you join in said writ of error, and beg to ask that you please notify me whether or not the Drainage Commission will so join in said writ.

Yours very respectfully,

BRANCH K. MILLER,
Attorney for the Board of Liquidation of the City Debt.

203 NEW ORLEANS, *July 5*, 1899.

Branch K. Miller, Esquire, attorney for the Board of Liquidation of the City Debt, New Orleans, La.

DEAR SIR: Mr. R. M. Walmsley, president of the drainage commission, has referred to us for answer your communication of this day, requesting that the Drainage Commission join the Board of Liquidation in a writ of error and the petition therefor to remove to the Supreme Court of the United States for review the case of State *ex rel.* Miss L. B. Wilder *et al. vs.* The Board of Liquidation of the City Debt, Drainage Commission of New Orleans, intervenor, No. 13034 of the docket of the supreme court of the State of Louisiana, and the final judgment or decree of the said court in said cause.

Replying, we beg to say that the Drainage Commission will join the Board of Liquidation as a plaintiff in error in said cause, but prefer to make its application for a writ of error by its own petition and obtain a separate writ of error in its own name. For this reason we decline a literal compliance with your request to join the Board of Liquidation in the writ of error which it proposes to obtain in said cause.

Yours very truly,

WM. W. HOWE,
WALKER B. SPENCER,
CHAS. P. COCKE,
Attorneys Drainage Commission of New Orleans.

Personally appeared Branch K. Miller, who, being duly sworn, deposes and says:

That he is the regularly retained attorney of the Board of
204 Liquidation of the City Debt, and, as such attorney, he represents the said board as a defendant in the suit of State *ex rel.* Miss L. B. Wilder *et al. vs.* The Board of Liquidation of the City Debt, Drainage Commission of New Orleans, intervenor, No. 13034 of the docket of the supreme court of the State of Louisiana.

That, on behalf of the said board of liquidation, he addressed the president of the Drainage Commission of New Orleans a notice that the Board of Liquidation of the City Debt would petition the chief justice of the supreme court of the State of Louisiana for the allowance of a writ of error in the case of State *ex rel.* Miss L. B. Wilder *et al. vs.* The Board of Liquidation of the City Debt, Drainage Commission of New Orleans, intervenor, No. 13034 of the docket of the supreme court of the State of Louisiana, and the request that said Drainage Commission join in said writ of error and the petition for the same; that he, affiant, personally delivered the said notice and request to R. M. Walmsley, Esquire, president of the Drainage Commission of New Orleans, on this the 5th day of July, 1899, a true copy of which notice and request is attached to this affidavit as a part hereof.

That in reply to the same he received the letter of Messrs. Wm. W Howe, Walker B. Spencer, and Charles P. Cocke, attorneys for the said drainage commission, a true copy of which letter is attached to this affidavit as a part hereof.

(Signed) BRANCH K. MILLER.

Sworn to and subscribed before me this the 6th day of July, 1899.

[SEAL.] (Signed) H. J. CARTER,
United States Commissioner.

205 Supreme Court of the State of Louisiana.

STATE *ex Rel.* MISS L. B. WILDER ET AL.
vs.
BOARD OF LIQUIDATION OF THE CITY DEBT; DRAINAGE COMMISSION OF NEW ORLEANS, INTERVENOR. } No. 13034.

To the Honorable Edward Douglas White, associate justice of the Supreme Court of the United States:

The petition of The Board of Liquidation of the City Debt, defendant in the above entitled and numbered cause, respectfully shows:

That in the above entitled and numbered suit there was drawn in question the validity of article 317 of the present constitution of the State of Louisiana, adopted in the year 1898, as being repugnant to the Constitution of the United States, particularly to section 10 of article 1 and the fourteenth amendment thereof, for the reason that said article 317 impaired the obligation of certain contracts

and deprived the owners of their property without due process of law; that the decision, final judgment, and decree of this court was in favor of the validity of the said article 317.

That on the 1st day of May, 1899, the supreme court of the State of Louisiana entered judgment herein in favor of relators and against this defendant, notwithstanding its pleas and defenses that said article 317 of the constitution of the State of Louisiana, adopted in 1898, was violative of the Constitution of the United States, particularly of section 10 of article 1 and the fourteenth amendment thereof.

That on the 30th day of June, 1899, the said court refused to grant a rehearing in this cause upon the petition of this defendant, setting forth the various grounds therefor.

That in said decision, final judgment and decree, and the proceedings had prior thereto in said court certain errors were
206 committee to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors which is filed or presented with this petition.

That petitioner desires, by writ of error, to remove this cause to the Supreme Court of the United States, there to be reviewed and the correctness of said decision, final judgment or decree, and the proceedings had prior thereto be determined.

Petitioner further shows that it has notified The Drainage Commission of the City of New Orleans, intervenor herein, to appear and join in this petition and the writ of error which it seeks to obtain, and that said Drainage Commission, in answer to said notice, has declared its purpose to join defendant as a plaintiff in error herein, but instead of joining in the writ which defendant seeks to obtain, prefers to obtain a writ of error upon its own petition and in its own name as a plaintiff in error.

All as will more fully appear by true copies of the said notice given by defendant, the reply thereto of the said drainage commission, and the affidavit of Branch K. Miller, Esquire, attorney for this defendant, showing the service of said notice and the receipt of the reply thereto, hereto attached as a part hereof.

Wherefore defendant prays that a writ of error may issue in its behalf to the supreme court of the State of Louisiana for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

(Signed) BRANCH K. MILLER,
Attorney for Petitioner.

Supreme Court of the State of Louisiana.

STATE *ex Rel.* MISS L. B. WILDER ET AL.
vs.
BOARD OF LIQUIDATION OF THE CITY DEBT; DRAINAGE COMMISSION of New Orleans, Intervenor. } No. 13034.

207 On this the 15th day of July, 1899, came the plaintiff, by its attorney, and filed herein and presented to the court its

petition praying for the allowance of a writ of error, to operate as a supersedeas, intended to be urged by it, praying also that a transcript of the record and proceedings and papers upon which the final judgment or decree herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may appear in the premises; on consideration whereof the said writ of error is allowed upon the defendant giving bond according to law in the sum of —, which shall operate as a supersedeas bond; and for further order pending said writ of error, that all further proceedings in this cause in this court and in the civil district court for the parish of Orleans or any division thereof be stayed and suspended until the final determination of said writ of error by the Supreme Court of the United States.

Writ of error allowed to operate as a supersedeas on the plaintiff in error furnishing a bond to be by me approved in the sum of one hundred and twenty thousand dollars.

Narragansett Pier, July 15, 1899.

(Signed) E. D. WHITE,
Associate Justice.

(Endorsed:) No. 13034. Supreme court of the State of Louisiana. State *ex rel.* Miss L. B. Wilder *et al. vs.* Board of Liquidation of the City Debt; Drainage Commission of New Orleans, intervenor. Petition for writ of error. Filed July 14, 1899. (Signed) T. McC. Hyman, clerk.

208 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Louisiana, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of Louisiana upon the relation of Miss Lucretia B. Wilder, Mrs. Anna B. Cook, J. E. Seaman, J. V. Calhoun, J. H. Buckley, T. W. Dwyer, Mrs. Mary Stamps, Miss H. A. Suter, Miss H. W. Seymour (now Mrs. Gresham), Miss Susan B. Elder, Miss Amentine Vienne, Miss M. Cusach, Miss B. Woods, Mr. A. S. Leche, Miss J. E. Linsler, Miss M. E. Pursell, Miss I. D. Pickens, Miss Kate Slack, Miss M. A. Curran, Mr. W. S. M'Elroy, Miss Carrie Forrer, Mrs. A. L. Howard, Miss M. G. Oliver, Miss Fannie A. Stringer, Miss Ida Whitaker, Miss Fannie S. Harby, Miss Louise Bertel, Mr. Vincent Mielly, Miss M. A. Nugent, Miss K. E. Eastman, Miss S. Bloomfield, Miss O. Woodworth, Mrs. Esther Dobie, Mrs. E. C. Hunter, Miss E. C. Dowty, Mr. D. A. Blanchard, Mrs. C. A. Curtis, Miss M. E. McLoughlin, Miss H. L. Mylotte, Miss M. A. Broderick, Miss M. G. Fischer, Miss B. Furneaux, Miss Ada Jenks,

Miss M. H. O'Connor, Miss A. M. Dart, H. B. Folk, Miss Isabelle Simmons, Miss Charlotte Stuart, Miss Nellie H. Watson, Miss Sallie Harris, Miss G. I. Lambourne, Miss Jennie Reese, Miss M. L. Martin, Miss J. C. Dodge, Miss Isabelle Levy, Mrs. M. E. McDonald, Mrs. J. C. Robinson, Miss Eliza Todd, Mrs. M. E. Taliefero, Miss Ida Patton, Miss M. A. Ames, Miss F. L. Flemich, Miss Clemence Charles, Miss Olivia Pitard, Miss M. A. Larkin, Mrs. R. Sulakoski, Miss M. Nevin, Mr. J. H. Neslin, Mrs. Annie Macken, Miss I. B. Grant, Miss
E. L. Venables, Miss K. M. Hamblett, Miss Maria Mulvey,
209 Miss A. J. Hamilton, Miss A. Conwell, Miss Annie Sinclaire, Miss A. S. Miller, Miss Julia Donovan, Miss H. M. Hewitt, Miss T. S. Sissa, Miss Emma B. Lloyd, Mrs. C. B. Sproule, Miss A. Paddon, Miss R. M. Woodley, Miss K. C. M'Cann, Miss M. McCord, Miss Cecilia Coll, Miss Carrie Labatt, Miss Julia Mulvey, Miss Lizzie Barry, Miss Julia Buckley, Miss B. E. Sullivan, Miss Ida Bennett, Miss Mary Walsh, Miss Anna Stokes, Miss Theresa Hartnett, Miss Laura J. Murphy, Mr. A. P. Williams, Miss R. E. Campanel, Miss Amelia Berhel, Miss B. Plicque, Miss Alice Jones, Mrs. C. H. Thezan, Mrs. Sarah B. Allen, Mrs. S. F. Williams, Mrs. C. M. Keppard, Mrs. E. P. M'Carthy, Miss C. C. Kennedy, Miss L. M. White, Mrs. Rosa T. Edmunds, Miss E. B. Egleston, Miss R. M. Chevallie, Mrs. K. J. Ricker, Mrs. A. E. Jones, Miss Addie M'Cord, Mrs. O. B. Cassanova, Mrs. H. M. Braguiens, Miss Emma Torrey, Miss Georgie Kerns, Miss L. Neelis, Miss M. J. O'Neill, Miss Julia Conroy, Mrs. J. E. Stehle, Miss M. Sassinot, Mrs. E. M. Keplinger, Miss K. Divine, Miss Adele Coudrain, Miss M. H. Hill, Miss O. K. Chellet, Miss R. King, Mr. Henry Reggio, Miss C. E. Carolan, Miss S. A. Grant, Miss Josephine Stewart, Mrs. M. L. Hampson, Miss Josephine Hille, Miss H. A. Pittman, Miss Rosa Carolon, Mrs. Palmyre Cartier, Miss Aline Ribet, Miss Alice Sherlock, Miss M. E. Lyons, Miss Gretta Donovan, Miss Annie Kerwin, Miss Annie Pearson, Miss M. A. Armstrong, Miss J. M. Mettaxa, Miss M. V. Serran, Miss A. E. King, Miss Emma Lacroix, Miss Alice Sheean, Miss Frances O'Connor, Mr. Warren Easton, Miss G. McCerran, Miss M. J. Paul, Mrs. Mary Moore, Miss S. V. Redwood, Miss A. M. Hero, Miss C. Nicol, Miss E. V. Relf, Miss Louise Faust, Miss Sallie Boyce, Miss F. L. Smith, Miss V. Russell, Miss Ellen Moran, Miss C. Lichenstein, Miss A. A. Finch, Miss E. J. Young, Mrs. D. R. Miller, Miss Helen McCarthy, Miss Mary McCann, Miss M. A. Ferguson, Miss Marie L. Point, Miss Lizzie Donovan, Miss Julia Hedges, Mrs. M. F. Gerrard, Miss K. Howley, Dr. Jas. Burns, Miss Antonis Hart, Miss Ella M. Brown, Miss Jane McAnulty, Miss Marie Peres, Miss Honora Brown, Miss A. F. Duval, Miss Mary L. Barrett,
Mr. W. J. Graham, Mrs. V. Ducatel, Miss Emily Wagner, Miss
210 Kate Toole, Miss Leonie Chevallo, Miss Ellen Carey, Miss Emma Ducoing, Miss A. M. Woods, Mr. Gustave Andry, Mrs. M. A. Doriocourt, Miss Ellen Quayle, Miss Rebecca Smith, Miss M. Bayhi, Miss Laura C. Harris, Mr. C. A. Barnes, Mrs. A. E. Van Camp, Mrs. Paul Ducatel, Miss Louise Van Dycke, Miss Eugenie Desdunes, Miss C. Hubbard, Mrs. Ann Bell, Miss M. O. Carter, Miss Rosa T. Moore, Miss Julia White, Miss Edith Harrison,

Miss Susan Smith, Miss F. F. Huberwald, Mrs. H. Chaery, Miss Louise Lynch, Miss Lizzie Kennedy, Miss Mary Murphy, Mrs. Sylvia Easton, Mr. E. H. Trepagnier, Mrs. M. F. Stevens, Miss H. M. McCarthy, Miss M. Marshall, Miss M. A. Stewart, Miss Lorenza Bertus, Miss Mary Gordon, Miss M. E. Anderson, Miss K. Delesdernier, Miss Alice Clark, Miss Ellen Kennedy, Miss Rita C. Monrose, Miss Kate Quaid, Miss E. B. Thomas, Mr. Ulric Bettison, Miss I. Warner, Mr. T. J. O'Sullivan, Miss Ellen Gow, Miss M. S. Wilson, Mrs A. L. Savio, Miss M. E. Cuggy, Miss Lucy Tallon, Miss Delphine Points, Miss Annie Scott, Miss K. J. Hughes, Miss Annie Sheean, Miss Emma Prados, Miss Sophie Blancq, Miss Julia Chevillon, Miss Mary B. Clark, Mrs. Parmela Cuculla, Miss Rosa Dione, Miss Esther Brando, Mr. A. B. Chandler, Miss Bridget Nolan, Miss J. A. Mayberry, Miss C. L. Stewart, Miss K. L. Magnon, Miss Kate E. Murphy, Miss Rebecca Fortune, Miss Marcella Curley, Miss M. O. Reynolds, Miss Mary McElligott, Miss A. E. O'Brien, Miss Mary Moore, Miss N. D. Cooper, Miss Jane Donnelly, Miss J. Fitzgerald, Miss Mary L. Stokes, Mrs. H. Kilshaw, Miss J. F. Cripps, Miss M. A. Murphy, Miss E. J. O'Hara, Miss S. Llambias, Mrs. C. Collerton, Miss M. A. Riley, Miss H. L. Garrett, Mrs. A. W. Brown, Miss J. J. Ingraham, Miss M. E. Golden, Miss Amelia Kelsey, Mrs. L. Ward, Mr. M. M. Lowe, Miss M. E. Tank, Miss Ellen Clapp, Miss Maud O'Brien, Miss L. E. Lambourne, Mrs. H. M. Wells, Miss K. L. Glenn, Miss N S. O'Connor, Miss Helena Phillips, Mrs. M. E. Mallam, Miss M. Creswell, Miss Bettie Murphy, Miss M. Emanuel, Miss M. A. Mulligan, Miss Agnes Boyce, Mrs. W. J. Kleinpeter, Miss Agatha Meehan, Miss Emma J. Taylor, Miss L. C. King, Mr. Louis Leche, Mrs. N. P. Hero, Miss Nettie Parr, Miss I. Fredericks, Miss B. A. Houghton, Miss
211 Mary J. Dowty, Miss Margaret Horen, Miss May Lemkin, Mrs. B. L. Beck, Miss Jessie Wilbur, Miss M. A. Wickes, Miss M. Bridgins, Miss I. E. O'Brien, Miss Eliza Wheaton, Miss H. M. Jourdan, Miss Ruth H. Walsh, Miss K. C. Connelly, Miss Georgie Hodgins, Miss E. Wilbur, Miss S. S. McEnery, Miss P. E. Packard, Miss L. E. Sterling, Miss M. E. Sommerville, Mrs. L. M. Williams, Miss Blanche Cenas, Mrs. Josephine Reed, Mrs. C. D. Cooke, Mrs. Cora P. Beecher, Miss Etna Portuer, Miss Sidonia Holmes, Mr. J. R. Hutchinson, Miss M. E. Finnerty, Miss E. B. Brown, Miss Irene Rondeau, Miss Minnie Weaver, Miss C. A. Forbes, Miss M. A. Reynolds, Miss Nellie Pickett, Miss M. A. Flanagan, Mrs. C. Reese, Miss L. C. Whitaker, Miss M. J. Dornon, Miss M. J. Kearney, Miss A. L. Beecher, Mrs. W. M. Carroll, Miss M. G. M'Lerenan, Miss D. L. Bostick, Miss Elese Hunter, Miss E. Allen, Miss A. E. M'Lirenan, Mrs. Ellen Hamilton, Miss C. A. Warner, Miss J. E. Morton, Mrs. M. E. Westerfield, Mrs. M. A. Martinez, Miss Mary Clarkson, Miss Ida Halberg, Miss E. Verlander, Mr. C. P. Guichard, Mrs. P. H. Saffold, Miss E E. Vigers, Miss Amelia Chiappella, Miss Mary E. Penn, Miss Jennie G. Simms, Miss J. C. Berhel, Mr. J. J. O'Connor, Miss L. S. Howard, Mrs. M. E. Fortier, Miss Mathilda Ohlsen, Miss Ada V. Rosseau, Mr. S. C. Clark, Mrs. L. B. Anderson, Mrs. A. E. Chase, Miss M. A. Gardiner, Miss Maggie Redlich, Miss N. E. Nicholls, Miss E. C.

Wheelahan, Mrs. M. E. Holmes, Miss E. F. Hayden, Mrs. M. J. Williams, Miss J. E. Mooney, Miss M. J. Turner, Miss Maggie Crawford, Miss H. E. Lawrence, Miss A. E. Kilgrove, Miss F. S. Dalacy, Miss E. L. Rodriguez, Miss Annie Leddy, Miss M. A. Sullivan, Miss Sallie Payne, Miss Lizzie Keeling, Miss Susan Schreiver, Miss Julia Clapp, Mr. T. L. Preston, Miss H. O. White, Miss L. E. Prest, Miss Fannie I. Dart, Miss E. Gardenghi, Miss Anna Dyer, Miss Emma T. Rosner, Miss Isabel Ferguson, Miss May Brooks, Miss Sarah H. Evans, Miss May E. Blood, Miss May Clack, Miss M. H. Hallaran, Miss Eliza Clark, Miss C. A. Beck, Mrs. R. Railpon, Miss Kate Kelly, Miss G. G. McManus, Miss Annie Theil, Miss A. L. Pascoe, Miss C. W. Bentley, Miss Florence Gordon, Miss Mary

212 A. Tallieu, Mrs. G. A. Anderson, Miss Isabel Ryan, Mrs. F. V. Hooper, Miss Nanon J. Kelley, Miss Mathilda Reuter, Miss N. B. Harthorne, Mrs. J. R. Dicks, Miss Lizzie Kelley, Miss Emily Olschner, Miss May A. Leddy, Miss R. T. Murphy, Miss Emma Quick, Anita Ball, G. Black, Mathilda Bernard, M. Bull, J. Brown, O. Brennan, A. Cornwell, R. Caolan, R. C. Chamberlain, M. M. Campanel, E. M. Clark, B. Carroll, A. J. Dougherty, N. Donovan, Alica Dickson, Mary Daly, Selina Duvic, Emily Dart, M. De Boer, D. Daignan, H. Diamond, E. B. Eagleson, Alica Ellis, Georgie Fountain, A. A. Finch, M. Flanagan, J. Gallagher, Kate Hughes, L. Hentich, Kate Howley, B. Hynes, M. Halloran, Irene Hester, Louise Hornbeck, Ida Helberg, E. Hamilton, A. Harper, C. M. Holland, N. Houlgrave, M. Harrison, M. G. Holmes, B. Harthorne, Daisy Jackson, N. James, I. E. Joyce, L. Kilshaw, A. C. Kearney, Mary Kennedy, A. Kennedy, M. D. Kennedy, J. Lahargue, M. A. Michel, L. Mulevy, A. Michal, B. Mayhen, B. Maher, M. D. Moore, M. Michel, Miss Lizzie Neelis, N. E. Nicholls, M. Orrantia, Agatha Pretus, F. Powers, R. M. Pascoe, L. A. Patton, G. Peyton, A. Payne, M. Ryan, S. J. Stephens, S. A. Steele, M. Smith, L. Smith, C. M. Spellicy, J. Simon, M. Spellicy, S. Smith, N. Shelly, A. Stickney, C. Stringer, D. Sheehan, Kate Sullivan, Martha Spence, Rosalie Shoeffer, E. J. Taylor, Alice Young, B. Allen, C. Amman, E. Vernard, E. O. Boyle, M. Barrow, B. Booth, Sarah Brooks, B. Blanc, J. Burke, C. Byrne, D. Burt, D. Cosgrove, M. Collins, E. Cure, E. Cronan, M. Caldwell, L. Chevoileau, E. Chineau, M. Caruthers, M. T. Cochran, M. Carroll, M. Connelly, M. Collier, M. Duignan, H. Daly, M. Donnelly, C. Denny, B. Doyle, E. Ducts, J. Foster, A. Gould, R. Hevyart, M. Hausman, B. Heavy, J. Jacquet, C. Killelae, J. Kinney, G. H. Kelley, M. Kelly, Mary Kelly, M. Lane, M. Lardner, C. Moffat, E. M'Cabe, M. M'Cormick, E. M'Ginnis, B. M'Keone, E. Nides, M. Morton, H. O'Connor, M. A. Pickett, E. Rhobacher, M. Riley, N. J. Rayna, John Ryan, M. Ryan, M. Schreiver, M. J. Stansbury, M. J. Shea, M. White, J. C. Watkins, A. Wilcox, A. Waters, which said parties were relators in the said supreme court of the State of Louisiana and are defendants in error in this writ, and The Board of Liquidation of the City Debt, which was defendant in the said

213 supreme court in the State of Louisiana and is plaintiff in error in this writ, the drainage commission being an intervenor in said supreme court of the State of Louisiana,

wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of the clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Board of Liquidation of the City Debt, defendant in said supreme court of the State of Louisiana and plaintiff in error in this writ, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in Washington within 30 days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and *and* according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of
214 the said Supreme Court, the 10th day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

(Signed) E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
——.

Endorsed: No. 13034. Supreme court of Louisiana. Board of Liquidation of City Debt *et al. versus* State *ex rel.* Miss L. B. Wilder *et als.* (Writ of error.)

Copy of a writ of error lodged in the clerk's office of the supreme court of the State of Louisiana, in pursuance of the statute in such cases made and provided, this fourteenth day of July, one thousand eight hundred and ninety-nine.

(Signed) BRANCH K. MILLER,
Attorney of Plaintiff in Error.

Filed July 14, 1899.
(Signed) T. McC. HYMAN, *Clerk.*

Petition for Writ of Error and Assignment of Errors of Drainage Commission of New Orleans.

Supreme Court of Louisiana.

STATE *ex Rel.* MISS L. B. WILDER ET ALS.
vs.
BOARD OF LIQUIDATION OF CITY DEBT; THE DRAINAGE COMMISSION OF NEW ORLEANS, Intervenor. } No. 13064.

To the honorable the chief justice of the supreme court of Louisiana:

The petition of The Drainage Commission of New Orleans, intervenor in the above entitled and numbered cause, with respect represents:

That in the records and proceedings and also in the re-
215 dition of the final decree in this cause by the honorable the supreme court of Louisiana there was drawn in question the validity of a statute of the State of Louisiana, to wit, articles 315, 316, and 317 of the constitution of the State of Louisiana of the year 1898, on the ground of its being repugnant to and in contravention of the Constitution of the United States, and especially repugnant to and in contravention of section 10 of article 1st and of the 14th article of amendment of the Constitution of the United States.

There was also drawn in question said section 10 of article 1st and the 14th article of amendment of the Constitution of the United States, and the decree of the supreme court of Louisiana was against the rights, titles, privileges, and immunities specially set up and claimed by the drainage commission of New Orleans under said article of the Constitution of the United States.

That said judgment and decree of the supreme court of Louisiana is now final, and said court is the highest court of law and equity of said State in which a decision of this cause could be had.

That petitioner is advised, informed, and believes that there is error to its prejudice in said final judgment and decree rendered against it as aforesaid, and that petitioner has a right and desires to have said cause removed by writ of error to the Supreme Court of the United States.

That petitioner has been notified by the board of liquidation of city debt that it intends to remove said cause by writ of error to the Supreme Court of the United States, and has called upon this petitioner to signify whether it will join as plaintiff in error therein, and this petitioner has notified said board that it desires to join as plaintiff in error upon its own writ of error.

Wherefore petitioner prays that the writ of error herewith
216 presented may be allowed and the bond herewith presented approved, and that a citation issue to the plaintiffs and to each of them in this cause, duly signed in accordance with acts of Congress, and for all general relief.

(Signed) W. W. HOWE, *Att'y.*

I decline to have the writ issued for the reason that in my opinion no Federal question is involved.

July 6th, 1899.

(Signed) FRANCIS T. NICHOLLS,
Chief Justice.

Writ of error allowed, returnable according to law, upon furnishing bond, conditioned according to law, in the sum of five hundred dollars.

July 15th, 1899.

(Signed) E. D. WHITE,
Associate Justice.

Assignment of Errors.

Supreme Court of the State of Louisiana.

STATE *ex Rel.* MISS L. B. WILDER ET AL.
vs.
BOARD OF LIQUIDATION OF THE CITY DEBT; DRAINAGE COMMISSION of New Orleans, Intervenor. } No. 13034.

The Drainage Commission of New Orleans, intervenor in this cause, in connection with its petition for a writ of error, makes the following assignment of error-, which it avers are contained in the decision, judgment, or decree of the supreme court of the State of Louisiana:

217 First. That by section 1 of the amendment to the constitution of the State of Louisiana proposed by act 110 of the General Assembly of said State, which proposal was approved July 8th, 1890, and which said amendment was adopted by a majority vote of the qualified electors of said State at the general election thereon, held in April, 1892, it is provided that the 4 per cent. constitutional bonds of the city of New Orleans thereby authorized shall be for the purpose of retiring the then valid outstanding bonds of the city of New Orleans and to retire judgments then or thereafter rendered against the said city on floating-debt claims prior to 1879 entitled to be funded under act 67 of the General Assembly of the State of Louisiana of 1884; that by section 3 of act 36 of the General Assembly of 1890, otherwise known as act 110 of that year, it was provided that all funds received by The Board of Liquidation of the City Debt, defendant herein, shall be deposited with the fiscal agent of the city of New Orleans or, if the same be deemed not satisfactory by the said board, with a chartered depository selected by the same to the credit of a special fund called the "bond-sales" fund, which fund by said section it is declared shall be used solely and exclusively for the purpose of retiring by payment all of the then valid outstanding bonds of the city of New Orleans matured or subject to call and the payments of judgments then or thereafter rendered on floating-debt claims prior to 1879 entitled to be funded under act 67 of 1884.

That the purpose- for which said bonds were authorized by said

amendment are exclusive of all others, and there is no authority in law for their issuance for any other purpose or purposes than those named in the said amendment; that by the terms of section 3 of said act 36 (or 110) of 1890 the proceeds of the sale of any of said 4 per cent. constitutional bonds are set apart and dedicated solely and exclusively to the purposes therein named.

218 That article 317 of the constitution of the State of Louisiana adopted in 1898, which directs the board of liquidation to sell a sufficient number of said constitutional bonds to pay certain obligations of the board of school directors of the public schools of the parish of Orleans for unpaid salaries of school teachers, portresses, and all other legitimate claims against said school board for the years 1882, 1883, 1884, 1885, 1886, and 1887, under the conditions named in article 315 of the said constitution of the State of Louisiana, so far as the same might be assumed by the city of New Orleans, after its examination of said claims, as directed by said article, directs the issuance and sale of said constitutional bonds for purposes not designated by said constitutional amendment and by said act 36 (or 110) of 1890, by reason of which it is an impairment of the contracts and the rights therefrom arising by the said constitutional amendment and the said act.

That the contracts so violated are those in favor of the holders of all outstanding premium bonds issued by the city of New Orleans; all constitutional bonds issued or to be lawfully issued under the authority of said amendment and the said act; those of all contractors who, up to the time the said constitution of 1898 went into effect, to wit, May 12, 1898, had constructed work of permanent public improvement, under contracts with the city of New Orleans, payable out of the surplus of the one per cent. tax authorized by the said amendment and the said act, which said surplus was established and fully described in section- 8 and 10 of said act, and especially all contracts made by the drainage commission for drainage works, and all bonds issued by it under the acts of the General Assembly of the State of Louisiana No. 114 of 1896 and No. 63 of 1898, which by the last-mentioned acts are payable out of the "permanent public improvement fund," composed of one-half of

219 the said surplus of the said one per cent tax established and described by sections 8 and 10 of the said act No. 36 (or 110) of 1890; which said fund, by said acts No. 114 of 1896 and No. 63 of 1898, is especially set apart and dedicated for the payment and discharge of all said contracts made and of all said bonds issued by the said drainage commission.

That said acts further provide that all provisions respecting the dedication and application of funds or monies shall constitute a contract with the holder or holders of said bonds and with each and every person or corporation which may have entered into contract with the said drainage commission, and expressly forbids any impairment of the same.

That the judgment or decree of the supreme court of the State of Louisiana which directs the execution by the board of liquidation of said article 317 of the constitution of the State of

Louisiana of 1898, by the sale of a sufficient number of said four per cent. constitutional bonds to pay and retire the obligations of the board of school directors for the parish of Orleans, which have been approved and assumed by the city of New Orleans under article 315 of said constitution, impairs the obligations of the contracts created by said acts No. 36 (or 110) of 1890, No. 114 of 1896, and No. 63 of 1898, and that the said article No. 317 of the said constitution of itself, as well as interpreted by the supreme court of the State of Louisiana, and as the said court, by its final judgment or decree herein, has directed its enforcement, and enforcement, is an impairment of the obligations of said contracts, and deprives all persons holding rights under the same of their property without due process of law, all in violation of section 10 of article 1 and the fourteenth amendment of the Constitution of the United States.

Second. That all persons who made contracts with the Drainage Commission of New Orleans and executed the same for the
220 construction of works of permanent public improvement, the prices of which are payable out of the surplus of the one per cent. tax authorized by the said constitutional amendment and levied by said act No. 36 (or 110) of 1890, one-half of which surplus by sections 8 and 10 of said act being specially dedicated to the payment and discharge of said contracts, are entitled to exclude from participation in any portion of said one per cent. tax any and all persons not entitled to participate therein by the said constitutional amendment and the said act, since any addition to the burden on said tax imposed by said amendment and said act will correspondingly diminish the surplus remaining after payment of the annual charges fixed thereon by said amendment and the said act, and thus impair the obligations of the said contract; that said article 317 of the constitution of the State of Louisiana of 1898, and the effect given to it by the final judgment or decree of the supreme court of the State of Louisiana in this case, is to impair the said contracts.

Third. That the obligations of all contracts made by the drainage commission and all bonds issued by it and sold under the aforesaid acts of 1896 and 1898 which are payable out of the permanent public improvement fund, composed of one-half of the surplus described in this assignment, are in like manner impaired by said article 317 of the State constitution of 1898, and the effect given to it by the final judgment or decree in this case, the impairment of such obligations being the same in all particulars as that set up in this assignment, as concerns all contracts for permanent public improvements made with the city of New Orleans, and payable out of the surplus of the said one per cent. tax, established and described in section 8 and 10 of said act No. 36 (or 110) of 1890, the addition of the charge for principal and interest on the constitutional bonds which are directed to be sold by said article 317 of the con-
221 stitution of the State of Louisiana of 1898 affecting a diminution of the said surplus, out of which it is the sole and ex-

clusive right of contractors, with the said drainage commission and the holders of its bonds, to be paid.

That said article 317 of said constitution and the effect given to it by the final judgment or decree of the supreme court of the State of Louisiana in this case is an impairment of the obligations of the contracts of said contractors and the holders of said bonds of the said drainage commission.

That said article 317 of the constitution of the State of Louisiana of 1898 and the effect given to it by the final judgment or decree of the supreme court of the State of Louisiana in this case is to impair the contracts in favor of all holders of said constitutional bonds created and evidenced by the said constitutional amendment and the said acts.

Fourth. That said article 317 of the constitution of the State of Louisiana of 1898 and the effect given to it by the final judgment or decree of the supreme court of the State of Louisiana in this cause impairs the obligation of all the contracts and bonds heretofore set out, mentioned, and described, and deprives the holders and owners thereof of their property without due process of law; in violation of section 10, article 1, and the fourteenth amendment of the Constitution of the United States.

Fifth. The supreme court of the State of Louisiana erred in giving such effect or any effect at all to said article 317; and it further erred in not rejecting the demand of the relators and dismissing their suit on these grounds; that the errors in the said final judgment and decree and the proceedings anterior thereto are those specially set out and enumerated above, and they entitled defendant to a reversal of said final judgment or decree of the supreme
222 court of the State of Louisiana, and the rejection by this court of the relators' demand.

Wherefore, for these and other errors apparent on the face of the record, this intervenor and plaintiff in error prays that the judgment of the said supreme court of the State of Louisiana be reversed and such directions be given that full force and efficacy may inure to intervenor by reason of the premises set up in its intervention filed in the said cause.

(Signed) W. W. HOWE,
Att'y Dr. Commiss.

(Endorsed:) No. 13034. Supreme court of Louisiana. State *ex rel.* L. B. Wilder *et al. vs.* Board of Liquidation of City Debt. Petition and assignment of errors. Filed July 15, 1899. (Signed) T. McC. Hyman, clerk.

Copy of a Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said supreme court of the State

of Louisiana, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Miss Lucretia B. Wilder, Mrs. Anna B. Cook, J. E. Seaman, J. V. Calhoun, J. H. Buckley, T. W. Dyer, Mrs. Mary Stamps, Miss H. A. Suter, Miss H. W. Seymour (now Mrs. Gresham), Miss Susan B. Elder, Miss Armentine Vienne, Miss M. Cusach, Miss B. Woods, Mr. A. S. Leche,
223 Miss J. E. Linsler, Miss M. E. Pursell, Miss I. D. Pickens, Miss Kate S[illegible]ck, Miss M. A. Curran, Mr. W. S. M'Elroy, Miss Carrie Forrer, Mrs. A. L. Howard, Miss M. G. Oliver, Miss Fannie A. Stringer, Miss Ida Whitaker, Miss Fannie S. Harby, Miss Louise Bertel, Mr. Vincent Mielly, Miss M. A. Nugent, Miss K. E. Eastman, Miss S. Bloomfield, Miss O. Woodworth, Mrs. Esther Dobie, Mrs. E. C. Hunter, Miss E. C. Dowty, Mr. D. A. Blanchard, Mrs. C. A. Curtis, Miss M. E. M'Loughlin, Miss H. L. Mylotte, Miss M. A. Broderick, Miss M. G. Fischer, Miss B. Furneaux, Miss Ada Jenks, Miss M. H. O'Connor, Miss A. M. Dart, H. B. Folk, Miss Isabelle Simmons, Miss Charlotte Stuart, Miss Nellie H. Watson, Miss Sallie Harris, Miss G. I. Lambourne, Miss Jennie Reese, Miss M. L. Martin, Miss J. C. Dodge, Miss Isabel Levy, Mrs. M. E. M'Donald, Mrs. J. C. Robinson, Miss Eliza Todd, Mrs. M. E. Taliafero, Miss Ida Patton, Miss M. A. Ames, Miss F. L. Flemich, Miss Clemence Charles, Miss Olivia Pitard, Miss M. A. Larkin, Mrs. R. Sulakoski, Miss M. Nevin, Mr. J. H. Heslin, Mrs. Annie Macken, Miss I. B. Grant, Miss E. L. Venables, Miss K. M. Hamblett, Miss Maria Mulvey, Miss A. J. Hamilton, Miss A. Conwell, Miss Annie Sinclair, Miss A. S. Miller, Miss Julia Donovan, Miss H. M. Hewitt, Miss T. A. Sisa, Miss Emma B. Lloyd, Mrs C. B. Sproule, Miss A. Paddon, Miss R. M. Woodley, Mrs. K. C. M'Cann, Miss M. M'Cord, Miss Cecilia Coll, Miss Carrie Lebatt, Miss Julia Mulvey, Miss Lizzie Barry, Miss Julia Buckley, Miss B. E. Sullivan, Miss Ida Bennett, Miss Mary Walsh, Miss Anna Stokes, Miss Theresa Hartnett, Miss Laura J. Murphy, Mr. A. P. Williams, Miss R. E. Campanel, Miss Amelia Berhel, Miss B. Plicque, Miss Alice Jones, Mrs. C. H. Thezan, Mrs. Sarah B. Allen, Mrs. S. F. Williams, Mrs. C. M. Keppard, Mrs. E. P. M'Carthy, Miss C. C. Kennedy, Miss L. M. White, Mrs. Rosa T. Edmunds, Miss E. B. Egleston, Miss R. M. Chevalle, Mrs. K. J. Ricker, Mrs. A. E. Jones, Miss Addie M'Cord, Mrs. O. B. Cassanova, Mrs. H. M. Braguiens, Miss Emma Torrey, Miss Georgie Kerns, Miss L. Neelis, Miss M. J. O'Neil, Miss Julia Conroy, Mrs. J. E. Stehle, Miss M. Sassinot, Mrs. E. M. Keplinger, Miss K. Divine, Miss Adele Coudrain, Miss
M. H. Hill, Miss O. K. Chellet, Miss R. King, Mr. Henry
224 Reggio, Miss C. E. Carolan, Miss S. A. Grant, Miss Josephine Stewart, Mrs. M. L. Hampson, Miss Josephine Hille, Miss H. A. Pittman, Miss Rosa Carolan, Mrs. Palmyre Cartier, Miss Aline Ribet, Miss Alice Sherlock, Miss M. E. Lyons, Miss Gretta Donovan, Miss Annie Kerwin, Miss Mary Pearson, Miss M. A. Armstrong, Miss J. M. Mettaxa, Miss M. V. Serran, Miss A. E. King, Miss Emma Lacroix, Miss Alice Sheean, Miss Frances O'Connor, Mr. Warren Easton, Miss G. M'Cerran, Miss M. J. Paul, Mrs. Mary Moore, Miss S. V. Redwood, Miss A. M. Hero, Miss C. Nicol, Miss E. V. Relf,

Miss Louise Faust, Miss Sallie Boyce, Miss F. L. Smith, Miss V. Russell, Miss Ellen Moran, Miss C. Lichtenstein, Miss A. A. Finch, Miss E. J. Young, Mrs. D. R. Miller, Miss Helen M'Carthy, Miss Mary M'Cann, Miss M. A. Ferguson, Miss Marie L. Points, Miss Lizzie Donovan, Miss Julia Hedges, Mrs. M. F. Gerrard, Miss K. Howley, Dr. Jas. Burns, Miss Antonis Hart, Miss Ella M. Brown, Miss Jane M'Anulty, Miss Marie Peres, Miss Honora Brown, Miss A. F. Duval, Miss Mary L. Barrett, Mr. W. J. Gahan, Mrs. V. Ducatel, Miss Emily Wagner, Miss Kate Toole, Miss Leonie Chevallo, Miss Ellen Carey, Miss Emma Ducoing, Miss A. M. Woods, Mr. Gustave Andry, Mrs. M. A. Doriocourt, Miss Ellen Quayle, Miss Rebecca Smith, Miss M. Bayhi, Miss Laura C. Harris, Mr. C. A. Barnes, Mrs. A. E. Van Camp, Mrs. Paul Ducatel, Miss Louise Van Dycke, Miss Eugenie Desdunes, Miss C. Hubbard, Mrs. Ann Bell, Miss M. O. Carter, Miss Rosa T. Moore, Miss Julia White, Miss Edith Harrison, Miss Susan Smith, Miss F. F. Huberwald, Mrs. H. Chaery, Miss Louise Lynch, Miss Lizzie Kennedy, Miss Mary Murphy, Mrs. Sylvia Easton, Mr. E. H. Trepagnier, Mrs. M. F. Stevens, Miss H. M'Carthy, Miss M. Marshall, Miss M. A. Stewart, Miss Lorenza Bertus, Miss Mary Gordon, Miss M. E. Anderson, Miss K. Delesdernier, Miss Alice Clark, Miss Ellen Kennedy, Miss Rita C. Monrose, Miss Kate Quaid, Miss E. B. Thomas, Mr. Ulric Bettison, Miss I. Warner, Mr. T. J. O'Sullivan, Miss Ellen Gow, Miss M. S. Wilson, Mrs. A. L. Savio, Miss M. E. Cuggy, Miss Lucy Tallon, Miss Delphine Points, Miss Annie Scott, Miss K. J. Hughes, Miss Annie Sheean, Miss Emma Prados, Miss
225 Sophie Blancq, Miss Julia Chevillon, Miss Mary B. Clark, Mrs. Parmela Cuculla, Miss Rosa Dione, Miss Esther Brando, Mr. A. B. Chandler, Miss Bridget Nolan, Miss J. A. Mayberry, Miss C. L. Stewart, Miss K. L. Magnon, Miss Kate E. Murphy, Miss Rebecca Fortune, Miss Marcella Curley, Miss M. O. Reynolds, Miss Mary M. Elligott, Miss A. E. O'Brien, Miss Mary Moore, Miss N. D. Cooper, Miss Jane Donnelly, Miss J. Fitzgerald, Miss Mary L. Stokes, Mrs. H. Kilshaw, Miss J. F. Cripps, Miss M. A. Murphy, Miss E. J. O'Hara, Miss S. Llambias, Mrs. C. Collerton, Miss M. A. Riley, Miss H. L. Garrett, Mrs. A. W. Brown, Miss J. J. Ingraham, Miss M. E. Golden, Miss Amelia Kelsey, Mrs. L. Ward, Mr. M. M. Lowe, Miss M. E. Tank, Miss Ellen Clapp, Miss Maud O'Brien, Miss L. E. Lambourne, Mrs. H. M. Wells, Miss K. L. Glenn, Miss N. S. O'Connor, Miss Helena Phillips, Mrs. M. E. Mallam, Miss M. Creswell, Miss Bettie Murphy, Miss M. Emanuel, Miss M. A. Mulligan, Miss Agnes Boyce, Mrs. W. J. Kleinpeter (or Kelinpeter), Miss Agatha Meehan, Miss Emma J. Taylor, Miss L. C. King, Mr. Louis Leche, Miss M. P. Hero, Miss Nettie Parr, Miss I. Fredericks, Miss B. A. Houghton, Miss Mary J. Dowty, Miss Margaret Horan, Miss May Lemkin, Mrs. B. L. Beck, Miss Jessie Wilbur, Miss M. A. Wickes, Miss M. Bridgins, Miss I. E. O'Brien, Miss Eliza Wheaton, Miss H. M. Jourdan, Miss Ruth H. Walsh, Miss K. C. Connelly, Miss Georgia Hodgins, Miss E. Wilbur, Miss S. S. M'Enery, Miss P. E. Packard, L. E. Stirling, Miss M. E. Sommerville, Mrs. L. M. Williams, Miss Blanche Cenas, Mrs. Josephine Reed, Mrs. C. D. Cooke, Mrs. Cora P. Beecher, Miss

Etna Portner, Miss Sidonia Holmes, Mr. J. R. Hutchinson, Miss M. E. Finnerty, Miss E. B. Brown, Miss Irene Rondeau, Miss Minnie Weaver, Miss C. A. Forbes, Miss M. A. Reynolds, Miss Nellie Pickett, Miss M. A. Flanagan, Mrs. C. Reese, Miss L. C. Whitaker, Miss M. J. Dornon, Miss M. J. Kearney, Miss A. L. Beecher, Mrs. W. M. Carroll, Miss M. G. M'Lerenan, Miss D. L. Bostick, Miss Elese Hunter, Miss E. Allen, Miss A. E. M'Lirenan, Mrs. Ellen Hamilton, Miss C. A. Warner, Miss J. E. Morton, Mrs. M. E. Westerfield, Mrs. M. A. Martinez, Miss Mary Clarkson, Miss Ida Halberg, Miss E. Verlander, Mr. C. P. Guichard, Mrs. P. H. Saffold, Miss E. E. Vigers, Miss Amelia Chiapella,
Miss Mary E. Penn, Miss Jennie G. Simms, Miss J. C. Berhel,
226 Mr. J. J. O'Connor, Miss L. S. Howard, Mrs. M. E. Fortier,
Miss Mathilde Ohsen, Miss Ada V. Rosseau, Mr. S. C. Clark, Mrs. L. B. Anderson, Mrs. A. E. Chase, Miss M. A. Gardiner, Miss Maggie Redlich, Miss N. E. Nicholls, Miss E. C. Wheelahan, Mrs. M. E. Holmes, Miss E. F. Hayden, Mrs. M. J. Williams, Miss J. E. Mooney, Miss M. J. Turner, Miss Maggie Crawford, Miss H. E. Lawrence, Miss A. E. Kilgrove, Miss F. S. Dalacy, Miss E. L. Rodriguez, Miss Annie Leddy, Miss M. A. Sullivan, Miss Sallie Payne, Miss Lizzie Keeling, Miss Susan Schriever, Miss Julia Clapp, Mr. T. L. Preston, Miss H. O. White, Miss L. E. Pres, Miss Fannie I. Dart, Miss E. Gardenghi, Miss Anna Dyer, Miss Emma T. Rosner, Miss Isable Ferguson, Miss May Brooks, Miss Sarah H. Evans, Miss May E. Blood, Miss May Clack, Miss M. H. Hallaran, Miss Eliza Clark, Miss C. A. Beck, Mrs. R. Railpon, Miss Kate Kelly, Miss C. G. M'Manus, Miss Annie Theil, Miss A. L. Pascoe, Miss C. W. Bentley, Miss Florence Gordon, Miss Mary Tallieu, Mrs. G. A. Anderson, Miss Isabel Ryan, Mrs. F. V. Hooper, Miss Nanon J. Kelly, Miss Mathilde Reuter, Miss N. B. Hawthorne, Mrs. J. R. Dicks, Miss Lizzie Kelly, Miss Emily Olschner, Miss May A. Leddy, Miss R. T. Murphy, Miss Emma Quick, Anita Ball, G. Black, Mathilda Bernard, M. Bull, J. Brown, O. Brennan, A. Cornwell, R. Carolan, R. C. Chamberlain, M. M. Campanel, E. M. Clark, B. Carroll, A. J. Dougherty, N. Donovan, Alica Dickson, Mary Daly, Selina Duvic, Emily Dart, M. De Boer, D. Daignan, H. Diamond, E. B. Eaglesson, Alica Ellis, Georgie Fountain, A. A. Finch, M. Flanagan, J. Gallagher, Kate Hughes, L. Hentich, Kate Howley, B. Hynes, M. Halloran, Irene Hester, Louise Hornbeck, Ida Halberg, E. Hamilton, A. Harper, C. M. Holland, N. Houlgrave, M. Harrison, M. G. Holmes, B. Harthorne, Daisy Jackson, M. James, I. E. Joyce, L. Kilshaw, A. C. Kearney, Mary Kennedy, A. Kennedy, M. D. Kennedy, J. Lahargue, M. A. Michel, L. Mulvey, A. Michel, B. Mayhen, B. Maher, M. D. Moore, M. Michel, Lizzie Neelis, N. E. Nicholls, M. Orrantia, Agatha Pretus, F. Powers, R. M. Pascoe, L. A. Patton, G. Peyton, A. Payne, M. Ryan, S. J. Stephens, S. A. Steele, M. Smith, L. Smith, C. M. Spellicy,
J. Simon, M. Spellicy, S. Smith, N. Shelly, A. Stick-
227 ney, C. Stringer, D. Sheehan, Kate Sullivan, Martha Spence,
Rosalie Shoeffer, E. J. Taylor, Alice Young, B. Allen, C. Amman, E. Bernard, E. O. Boyle, M. Barrow, B. Booth, Sarah Brooks, B. Blanc, J. Burke, C. Byrne, D. Burt, D. Cosgrove, M

Collins, E. Cure, E. Cronan, M. Caldwell, L. Chevolleau, E. Chineau, M. Carithers, M. T. Cochran, M. Carroll, M. Connelly, M. Collier, M. Duignan, H. Daly, M. Donnelly, C. Denny, B. Doyle, E. Ducts, J. Foster, A. Gould, R. Hevyart, M. Hausman, B. Heavy, J. Jacquet, C. Killelae, J. Kinney, G. H. Kelly, M. Kelly, Mary Kelly, M. Lane, M. Lardner, C. Moffatt, E. M'Cabe, M. M'Cormack, E. M'Ginnis, B. McKeone, E. Nides, M. Morton, H. O'Connor, M. A. Pickett, E. Rhobacher, M. Riley, N. J. Rayna, John Ryan, M. Ryan, M. Schreiver, M. J. Stansbury, M. Shea, M. White, J. C. Watkins, A. Wilcox, A. Waters, are plaintiffs and relators, and The Board of Liquidation of City Debt is defendant, and Drainage Commission of New Orleans is intervenor, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of the clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Drainage Commission of New Orleans, intervenor in said suit, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under
228 your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 10th day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

[SEAL.] (Signed) E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
(Signed) E. D. WHITE,
Associate Justice, Supreme Court of the United States.

Endorsed: No. 13034. State *ex rel.* L. B. Wilder *et als. versus* Board of Liquidation of City Debt. Copy of a writ of error lodged in the clerk's office of the supreme court of the State of Louisiana.

in pursuance of the statute in such cases made and provided, this 15th day of July, one thousand eight hundred and ninety-nine. (Signed) Howe, Spencer & Cocke, attorney- of plaintiff in error. Filed July 15, 1899. (Signed) T. McC. Hyman, clerk.

229 *Bond for Writ of Error of Drainage Commission.*

Know all men by these presents that we, Drainage Commission of New Orleans, as principal, and Rob't M. Walmsley, as surety, are held and firmly bound unto Miss Lucretia B. Wilder and other parties below named in the full and just sum of five hundred dollars, to be paid to the said Miss Lucretia B. Wilder, Mrs. Anna B. Cook, J. E. Seaman, J. V. Calhoun, J. H. Buckley, T. W. Dyer, Mrs. Mary Stamps, Miss H. A. Suter, Miss H. W. Seymour (now Mrs. Gresham), Miss Susan B. Elder, Miss Armentine Vienne, Miss M. Cusach, Miss B. Woods, Mr. A. S. Leche, Miss J. E. Linsler, Miss M. E. Pursell, Miss I. D. Pickens, Miss Kate Slack, Miss M. A. Curran, Mr. W. S. M'Elroy, Miss Carrie Forrer, Mrs. A. L. Howard, Miss M. G. Oliver, Miss Fannie A. Stringer, Miss Ida Whitaker, Miss Fannie S. Harbly, Miss Louise Bertel, Mr. Vincent Mielly, Miss M. A. Nugent, Miss K. E. Eastman, Miss S. Bloomfield, Miss O. Woodworth, Mrs. Esther Dobie, Mrs. E. C. Hunter, Miss E. C. Dowty, Mr. D. A. Blanchard, Mrs. C. A. Curtis, Miss M. E. M'Loughlin, Miss H. L. Mylotte, Miss M. A. Broderick, Miss M. G. Fischer, Miss B. Furneaux, Miss Ada Jenks, Miss M. H. O'Connor, Miss A. M. Dart, H. B. Folk, Miss Isabella Simmons, Miss Charlotte Stuart, Miss Nellie H. Watson, Miss Sallie Harris, Miss G. I. Lambourne, Miss Jennie Reese, Miss M. L. Martin, Miss J. C. Dodge, Miss Isabel Levy, Mrs. M. E. M'Donald, Mrs. J. C. Robinson, Miss Eliza Todd, Mrs. M. E. Taliafero, Miss Ida Patton, Miss M. A. Ames, Miss F. L. Flemich, Miss Clemence Charles, Miss Olivia Pitard, Miss M. A. Larkin, Mrs. R. Sulakoski, Miss M. Nevin, Mr. J. H. Heslin, Mrs. Annie Macken, Miss I. B. Grant, Miss E. L. Venables, Miss K. M. Hamblett, Miss Maria Mulvey, Miss A. J. Hamilton, Miss A. Conwell, Miss Annie Sinclair, Miss A. S. Miller, Miss Julia Donovan, Miss M. H. Hewitt, Miss T. A. Sisa, Miss Emma B. Lloyd, Mrs. C. B. Sproule, Miss A. Paddon, Miss R. M. Woodley, Mrs. K. C. M'Cann, Miss M. M'Cord, Miss Cecilia Coll,
Miss Carrie Labatt, Miss Julia Mulvey, Miss Lizzie
230 Barry, Miss Julia Buckley, Miss B. E. Sullivan, Miss Ida Bennett, Miss Mary Walsh, Miss Anna Stokes, Miss Theresa Hartnett, Miss Laura J. Murphy, Mr. A. P. Williams, Miss R. E. Campanel, Miss Amelia Berbel, Miss B. Plicque, Miss Alice Jones, Mrs. C. H. Thezan, Mrs. Sarah B. Allen, Mrs. S. F. Williams, Mrs. C. M. Keppard, Mrs. E. P. M'Carthy, Miss C. C. Kennedy, Miss L. M. White, Mrs. Rosa T. Edmonds, Miss E. B. Egleston, Miss R. M. Chevallie, Mrs. K. J. Ricker, Mrs. A. E. Jones, Miss Addie M'Cord, Mrs. O. B. Cassanova, Mrs. H. M. Braguiens, Miss Emma Torrey, Miss Georgie Kerns, Miss L. Neelis, Miss M. J. O'Neil, Miss Julia Conroy, Mrs. J. E. Stehle, Miss M. Sassinot, Mrs. E. M. Keplinger, Miss K. Divine, Miss Adele Coudrain, Miss M. H. Hill, Miss O. K.

Chellet, Miss R. King, Mr. Henry Reggio, Miss C. E. Carolon, Miss S. A. Grant, Miss Josephine Stewart, Mrs. M. L. Hampson, Miss Josephine Hille, Miss H. A. Pittman, Miss Rosa Carolan, Mrs. Palmyre Cartier, Miss Aline Ribet, Miss Alice Sherlock, Miss M. E. Lyons, Miss Gretta Donovan, Miss Annie Kerwin, Miss Mary Pearson, Miss M. A. Armstrong, Miss J. M. Mettaxa, Miss M. V. Serran, Miss A. E. King, Miss Emma Lacroix, Miss Alice Sheean, Miss Frances O'Connor, Mr. Warren Easton, Miss G. M'Cerran, Miss M. J. Paul, Mrs. Mary Moore, Miss S. V. Redwood, Miss A. M. Hero, Miss C. Nicol, Miss E. V. Relf, Miss Louise Faust, Miss Sallie Boyce, Miss F. L. Smith, Miss V. Russell, Miss Ellen Moran, Miss C. Lichtenstein, Miss A. A. Finch, Miss E. J. Young, Mrs. D. R. Miller, Miss Helen M'Carthy, Miss Mary M'Cann, Miss M. A. Ferguson, Miss Marie L. Points, Miss Lizzie Donovan, Miss Julia Hedges, Mrs. M. F. Gerrard, Miss K. Howley, Dr. Jas. Burns, Miss Antonis Hart, Miss Ella M. Brown, Miss Jane M'Anulty, Miss Marie Peres, Miss Honora Brown, Miss A. F. Duval, Miss Mary L. Barrett, Mr. W. J. Gahan, Mrs. V. Ducatel, Miss Emily Wagner, Miss Kate Toole, Miss Leone Chevallo, Miss Ellen Carey, Miss Emma Ducoing, Miss A. M. Woods, Mr. Gustave Andry, Mrs. M. A. Doriocourt, Miss Ellen Quayle, Miss Rebecca Smith, Miss M. Bayhi, Miss Laura C. Harris, Mr. C. A. Barnes, Mrs. A. E. Van Camp, Mrs. Paul Ducatel, Miss Louise Van Dyke, Miss Eugenie Desdunes, Miss C. Hubbard, Mrs. Ann Bell,
231 Miss M. O. Carter, Miss Rosa T. Moore, Miss Julia White, Miss Edith Harrison, Miss Susan Smith, Miss F. F. Huberwald, Mrs. H. Chaery, Miss Louise Lynch, Miss Lizzie Kennedy, Miss Mary Murphy, Mrs. Sylvia Easton, Mr. E. H. Trepagnier, Mrs. M. F. Stevens, Miss H. M'Carthy, Miss M. Marshall, Miss M. A. Stewart, Miss Lorenza Bertus, Miss Mary Gordon, Miss M. E. Anderson, Miss K. Delesdernier, Miss Alice Clark, Miss Ellen Kennedy, Miss Rita C. Monrose, Miss Kate Quaid, Miss E. B. Thomas, Mr. Ulric Bettison, Miss I. Warner, Mr. T. J. O'Sullivan, Miss Ellen Gow, Miss M. S. Wilson, Mrs. A. L. Savio, Miss M. E. Cuggy, Miss Lucy Tallon, Miss Delphine Points, Miss Annie Scott, Miss K. J. Hughes, Miss Annie Sheean, Miss Emma Prados, Miss Sophie Blancq, Miss Julia Chevillon, Miss Mary B. Clark, Mrs. Pamela Cuculla, Miss Rosa Dione, Miss Esther Brando, Mr. A. B. Chandler, Miss Bridget Nolan, Miss J. A. Mayberry, Miss C. L. Stewart, Miss K. L. Magnon, Miss Kate E. Murphy, Miss Rebecca Fortune, Miss Marcella Curley, Miss M. O. Reynolds, Miss Mary M'Elligot, Miss A. E. O'Brien, Miss Mary Moore, Miss N. D. Cooper, Miss Jane Donnelly, Miss J. Fitzgerald, Miss Mary L. Stokes, Mrs. H. Kilshaw, Miss J. F. Cripps, Miss M. A. Murphy, Miss E. J. O'Hara, Miss S. Llambias, Mrs. C. Collerton, Miss M. A. Riley, Miss H. L. Garrett, Mrs. A. W. Brown, Miss J. J. Ingraham, Miss M. E. Golden, Miss Amelia Kelsey, Mrs. L. Ward, Mr. M. M. Lowe, Miss M. E. Tank, Miss Ellen Clapp, Miss Maud O'Brien, Miss L. E. Lambourne, Mrs. H. M. Wells, Miss K. L. Glenn, Miss N. S. O'Connor, Miss Helena Phillips, Mrs. M. E. Mallam, Miss M. Creswell, Miss Bettie Murphy, Miss M. Emanuel, Miss M. A. Mulligan, Miss Agnes Boyce, Mrs. W. J. Kleinpeter (or Kelinpeter), Miss Agatha Meehan, Miss

Emma J. Taylor, Miss L. C. King, Mr. Louis Leche, Miss N. P. Hero, Miss Nettie Parr, Miss I. Fredericks, Miss B. A. Houghton, Miss Mary J. Dowty, Miss Margaret Horan, Miss May Lemkin, Mrs. B. L. Beck, Miss Jessie Wilbur, Miss M. A. Wickes, Miss M. Bridgins, Miss I. E. O'Brien, Miss Eliza Wheaton, Miss H. M. Jourdan, Miss Ruth H. Walsh, Miss K. C. Connelly, Miss Georgia Hodgins, Miss E. Wilbur, Miss S. S. M'Enery, Miss P. E. Packard, Miss L. E. Stirling, Miss M. E. Sommer-
232 ville, Mrs. L. M. Williams, Miss Blanche Cenas, Mrs. Josephine Reed, Mrs. C. D. Cocke, Mrs. Cora P. Beecher, Miss Etna Porter, Miss Sidonia Holmes, Mr. J. R. Hutchinson, Miss M. E. Finnerty, Miss E. B. Brown, Miss Irene Rondeau, Miss Minnie Weaver, Miss C. A. Forbes, Miss M. A. Reynolds, Miss Nellie Pickett, Miss M. A. Flanagan, Mrs. C. Reese, Miss L. C. Whitaker, Miss M. J. Dornon, Miss M J. Kearney, Miss A. L. Beecher, Mrs. W. M. Carroll, Miss M. G. M'Lerenan, Miss D. L. Bostick, Miss Elese Hunter, Miss E. Allen, Miss A. E. M'Lirenan, Mrs. Ellen Hamilton, Miss C. A. Warner, Miss J. E. Morton, Mrs. M. E. Westerfield, Mrs. M. A. Martinez, Miss Mary Clarkson, Miss Ida Halberg, Miss E. Verlander, Mr. C. P. Guichard, Mrs. P. H. Saffold, Miss E. E. Vigers, Miss Amelia Chiapella, Miss Mary E. Penn, Miss Jennie G. Simms, Miss J. C. Berhel, Mr. J. J. O'Connor, Miss L. S. Howard, Mrs. M. E. Fortier, Miss Mathilde Ohlsen, Miss Ada V. Rousseau, Mr. S. C. Clarke, Mrs. L. B. Anderson, Mrs. A. E. Chase, Miss M. A. Gardiner, Miss Maggie Redlich, Miss N. E. Nicholls, Miss E. C. Wheelahan, Mrs. M. E. Holmes, Miss E. F. Hayden, Mrs. M. J. Williams, Miss J. E. Mooney, Miss M. J. Turner, Miss Maggie Crawford, Miss H. E. Lawrence, Miss A. E. Kilgrove, Miss F. S. Dalacy, Miss E. L. Rodriguez, Miss Annie Leddy, Miss M. A. Sullivan, Miss Sallie Payne, Miss Lizzie Keeling, Miss Susan Schriever, Miss Julia Clapp, Mr. T. L. Preston, Miss H. O. White, Miss L. E. Prest, Miss Fannie I. Dart, Miss E. Gardenghi, Miss Anna Dyer, Miss Emma T. Rosner, Miss Isabel Ferguson, Miss May Brooks, Miss Sarah H. Evans, Miss May E. Blood, Miss May Clack, Miss M. H. Hallaran, Miss Eliza Clark, Miss C. A. Beck, Mrs. R. Railpon, Miss Kate Kelly, Miss C. G. McManus, Miss Annie Theil, Miss A. L. Pascoe, Miss C. W. Bentley, Miss Florence Gordon, Miss Mary Tallieu, Mrs. G. A. Anderson, Miss Isabel Ryan, Mrs. F. V. Hooper, Miss Nanon J. Kelly, Miss Mathilda Reuter, Miss N. B. Hawthorne, Mrs. J. R. Dicks, Miss Lizzie Kelly, Miss Emily Olschner, Miss May A. Leddy, Miss R. T. Murphy, Miss Emma Quick, Anita Ball, O. Black, Mathilda Bernard, M. Buil, J. Brown, O. Brennan, A. Cornwell, E. Carolan, R. C. Chamberlain, M. M. Campa-
233 nel, E. M. Clark, B. Carroll, A. J. Dougherty, N. Donovan, Alica Dickson, Mary Daly, Selina Duvic, Emily Dart, M. De Boer, D. Daignan, H. Diamond, E. B. Eaglesson, Alica Ellis, Georgie Fountain, A. A. Finch, M. Flanagan, J. Gallagher, Kate Hughes, L. Hentich, Kate Howley, B. Hynes, M. Halleran, Irene Hester, Louise Hornbeck, Ida Halbecg, E. Hamilton, A. Harper, G. M. Holland, N. Houlgrave, M. Harrison, M. O. Holmes, B. Harthorne, Daisy Jackson, N. James, I. B. Joyce, L. Kilshaw, A. C. Kearney, Mary Kennedy, A. Kennedy, M. D. Kennedy, J. Lahargue, M. A. Michel,

L. Mulvey, A. Michel, B. Mayhen, B. Maher, M. D. Moore, M. Michel, Lizzie Neelis, N. N. Nicholls, M. Orrantia, Agatha Pretus, F. Powers, R. M. Pascoe, L. A. Patton, G. Peyton, A. Payne, M. Ryan, S. J. Stephens, S. A. Steele, M. Smith, L. Smith, C. M. Spellicy, J. Simon, M. Spellicy, S. Smith, N. Shelly, A. Stickney, C. Stringer, D. Sheehan, Kate Sullivan, Martha Spence, Rosalie Schoeffer, E. J. Taylor, Alice Young, B. Allen, C. Amman, E. Bernard, E. O. Doyle, M. Barrow, B. Booth, Sarah Brooks, B. Blanc, J. Burke, C. Byrne, D. Burke, D. Cosgrove, M. Collins, C. Cure, E. Cronan, M. Caldwell, L. Chevolleau, E. Chineau, M. Carithers, M. T. Cochran, M. Carroll, M. Connelly, M. Collier, M. Duignan, H. Daly, M. Donnelly, C. Denny, B. Doyle, E. Ducts, J. Foster, A. Gould, R. Hevyart, H. Hausman, B. Heavy, J. Jacquet, G. Killelae, J. Kinney, G. H. Kelly, M. Kelly, Mary Kelly, M. Lane, M. Lardner, C. Moffatt, E. McCabe, M. M'Cormack, E. M'Ginnis, B. M'Keone, E Nides, M. Morton, H. O'Connor, M. A. Pickett, E. Rhobacher, M. Riley, N. J. Rayna, John Ryan, M. Ryan, M. Schreiver, N. J. Stansbury, M. Shea, M. White, J. C. Watkins, A. Wilcox, and A. Waters, plaintiffs and relators, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fifth day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a term of the supreme court of Louisiana, in a suit depending in said supreme court, wherein Miss Lu-
234 cretia B. Wilder and others are plaintiffs and Board of Liquidation of City Debt was defendant and Drainage Commission of New Orleans was intervenor, judgment was rendered against Drainage Commission of New Orleans, intervenor, and the said Drainage Commission of New Orleans having obtained a writ of error and filed a copy thereof in the clerk's office of the said supreme court of Louisiana to reverse the judgment in the aforesaid suit, and a citation directed to the said Miss Lucretia B. Wilder and the other relators set forth above, citing and admonishing them to be and appear at the Supreme Court of the United States, to be holden at Washington, thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said Drainage Commission of New Orleans shall prosecute its writ to effect and answer all damages and cost if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) DRAINAGE COMMISSION OF NEW ORLEANS, [L. S.]
By R. M. WALMSLEY, *President.* [L. S.]
R. M. WALMSLEY. [L. S.]

Sealed and delivered in the presence of—
(Signed) A. SCHREIBER.
" W. B. SPENCER.

Approved July 10th, 1899.
(Signed) E. D. WHITE,
Associate Justice of the Supreme Court of the United States.

235 UNITED STATES OF AMERICA, } ss:
State of Louisiana. }

Personally appeared Robert M. Walmsley, who, being duly sworn, deposes and says that he is the surety of the within bond; that he resides in the city of New Orleans, State of Louisiana, and is worth the full sum of five hundred dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) R. M. WALMSLEY.

Subscribed and sworn before me this 5th day of July, 1899.

(Signed) E. P. COUSIN, [SEAL.]
Not. Public.

Endorsed: No. 13034. Supreme court of the State of Louisiana. Board of Liquidation City Debt *et al.*, plaintiffs in error, *vs.* State *ex rel.* Miss L. B. Wilder *et als.*, defendants in error. Bond for writ of error. Filed July 15th, 1899. (Signed) T. McC. Hyman, clerk.

236 *Bond for Writ of Error of Board of Liquidation.*

Know all men by these presents that we, The Board of Liquidation of the City Debt, as principal, and The American Surety Company of New York, as surety, are held and firmly bound unto Miss Lucretia B. Wilder, Mrs. Anna B. Cook, J. E. Seaman, J. V. Calhoun, J. H. Buckley, T. W. Dyer, Mrs. Mary Stamps, Miss H. A. Suter, Miss H. W. Seymour (now Mrs. Gresham), Miss Susan B. Elder, Miss Armentine Vienne, Miss H. Cusach, Miss B. Woods, Mr. A. S. Leche, Miss J. E. Linsler, Miss M. E. Pursell, Miss I. D. Pickens, Miss Kate Slack, Miss M. A. Curran, Mr. W. S. M'Elroy, Miss Carrie Forrer, Mrs. A. L. Howard, Miss M. G. Oliver, Miss Fannie A. Stringer, Miss Ida Whitaker, Miss Fannie S. Harby, Miss Louise Berthel, Mr. Vincent Mielly, Miss M. A. Nugent, Miss E. Eastman, Miss S. Bloomfield, Miss O. Woodworth, Mrs. Esther Dobie, Mrs. E. C. Hunter, Miss E. C. Dowty, Mr. D. A. Blanchard, Mrs. C. A. Curtis, Miss M. E. M'Loughlin, Miss H. L. Mylotte, Miss M. A. Broderick, Miss M. G. Fischer, Miss B. Furneaux, Miss Ada Jenks, Miss M. H. O'Connor, Miss A. M. Dart, H. B. Folk, Miss Issabella Simmons, Miss Charlotte Stewart, Miss Nellie H. Watson, Miss Sallie Harris, Miss G. I. Lamborne, Miss Jennie Reese, Miss M. L. Martin, Miss J. C. Dodge, Miss Isabelle Levy, Mrs. N. E. M'Donald, Mrs. J. C. Robinson, Miss Eliza Todd, Mrs. M. E. Talifero, Miss Ida Patton, Miss M. A. Ames, Miss F. L. Flemich, Miss Clemence Charles, Miss Oilvie Pitard, Miss M. A. Larkin, Mrs. R. Sulakoski, Miss M. Nevin, *Miss* Mr. J. H. Heslin, Mrs. Annie Macken, Miss I. B. Grant, Miss E. L. Venables, Miss K. M. Hamblett, Miss Maria Mulvey, Miss A. J. Hamilton, Miss A. Cornwell, Miss Annie Sinclair, Miss A. S. Miller, Miss Julia Donovan, Miss H. M. Hewitt, Miss T. A. Sisa, Miss Emma B. Lloyd, Mrs. C. V. Sproule, Miss A. Paddon, Miss R. M. Woodley, Miss K. C. M'Cann, Miss M. M'Cord, Miss Cecilia Coll, Miss Carrie Labatt, Miss Julia Mulvey, Miss Lizzie Barry, Miss Julia Buckley,

Miss B. E. Sullivan, Miss Ida Bennett, Miss Mary Walsh, Miss Annie Stokes, Miss Theresa Hartnett, Miss Laura J. Murphy, Mr.
237 A. P. Williams, Miss R. E. Campanel, Miss Amelia Berbel, Miss B. Plicque, Miss Alice Jones, Mrs. C. H. Thezan, Mrs. Sarah B. Allen, Mrs. S. F. Williams, Mrs. C. M. Keppard, Mrs. E. P. M'Carthy, Miss C. C. Kennedy, Miss L. M. White, Mrs. Rosa T. Edmunds, Miss E. B. Egleston, Miss R. M. Chevaillie, Mrs. K. J. Ricker, Mrs. A. E. Jones, Miss Addie M'Cord, Mrs. O. B. Cassanova, Miss H. M. Braguiens, Miss Emma Torrey, Miss Georgie Kerns, Miss L. Neelis, Miss M. J. O'Neill, Miss Julia Conroy, Mrs. J. E. Stehle, Miss M. Sassinot, Mrs. E. M. Keplinger, Miss K. Divine, Miss Adele Coudrain, Miss M. H. Hill, Miss O. K. Chellet, Miss R. King, Mr. Henry Reggio, Miss C. E. Carolan, Miss S. A. Grant, Miss Josephine Stewart, Mrs. M. L. Hampson, Miss Josephine Hille, Miss H. A. Pittman, Miss Rosa Carolan, Mrs. Palmyre Cartier, Miss Aline Ribet, Miss Alice Sherlock, Miss M. E. Lyons, Miss Gretta Donovan, Miss Annie Kerwin, Miss Mary Pearson, Miss M. A. Armstrong, Miss J. M. Mettaxa, Miss M. V. Serran, Miss A. E. King, Miss Emma Lacroix, Miss Alice Sheenan, Miss Frances O'Connor, Mr. Warren Easton, Miss G. M'Cerran, Miss M. J. Paul, Mrs. Mary Moore, Miss S. V. Redwood, Miss A. M. Hero, Miss C. Nicol, Miss E. V. Relf, Miss Louise Faust, Miss S[illegible]lie Boyce, Miss F. L. Smith, Miss V. Russell, Miss Ellen Moran, Miss C. Lichtenstein, Miss A. A. Finch, Miss E. J. Young, Mrs. D. R. Miller, Miss Helen M'Carthy, Miss Mary M'Cann, Miss M. A. Ferguson, Miss Marie L. Points, Miss Lizzie Donovan, Miss Julia Hedges, Mrs. M. F. Gerrard, Miss K. Howley, Dr. Jas. Burns, Miss Antonis Hart, Miss Ella M. Brown, Miss Jane M'Anulty, Miss Marie Peres, Miss Henora Brown, Miss A. F. Duval, Miss Mary L. Barrett, Mr. W. J. Graham, Mrs. V. Ducatel, Miss Emily Wagner, Miss Kate Toole, Miss Leonie Chevallo, Miss Ellen Carey, Miss Emma Ducoing, Miss A. M. Woods, Mr. Gustave Andre, Mrs. M. A. Doricourt, Miss Ellen Quayle, Miss Rebecca Smith, Miss M. Bayhi, Miss Laura C. Harris, Mr. C. A. Barnes, Mrs. A. E. Van Camp, Mrs. Paul Ducatel, Miss Louise Van Dycke, Miss Eugenie Desdunes, Miss C. Hubbard, Mrs. Annie Bell, Miss M. O. Carter, Miss
238 Rosa T. Moore, Miss Julia White, Miss Edith Harrison, Miss Susan Smith, Miss F. F. Huberwald, Mrs. H. Chaery, Miss Louise Lynch, Miss Lizzie Kennedy, Miss Mary Murphy, Mrs. Sylvia Easton, Mr. E. H. Trepagnier, Mrs. M. F. Stephens, Miss H. M'Carthy, Miss M. Marshall, Miss M. A. Stewart, Miss Lorenzo Bertus, Miss Mary Gordon, Miss M. E. Anderson, Miss K. Delederdernier, Miss Alice Clark, Miss Ellen Kennedy, Miss Rita C. Monrose, Miss Kate Quaid, Miss E. B. Thomas, Mr. Ulric Bettison, Miss I. Warner, Mr. T. J. O'Sullivan, Miss Ellen Gow, Miss M. S. Wilson, Mrs. A. L. Savio, Miss M. E. Cuggy, Miss Lucy Tallon, Miss Delphine Points, Miss Annie Scott, Miss K. J. Hughes, Miss Annie Sheenan, Miss Emma Prados, Miss Sophie Blancq, Miss Julia Chevillon, Miss Mary B. Clark, Mrs. Parmela Cuculla, Miss Rosa Dione, Miss Esther Brando, Mr. A. B. Chandler, Miss Bridget Nolan, Miss J. A. Mayberry, Miss C. L. Stewart, Miss K. L. Magnon, Miss Kate

E. Murphy, Miss Rebecca Fortune, Miss Marcella Curley, Miss M. O. Reynolds, Miss Mary M'Elligot, Miss A. E. O'Brien, Miss Mary Moore, Miss N. D. Cooper, Miss Jane Donolly, Miss J. Fitzgerald, Miss Mary L. Stokes, Mrs. H. Kilshaw, Miss J. F. Cripps, Miss M. A. Murphy, Miss E. J. O'Hara, Miss S. Llambias, Mrs. C. Collerton, Miss M. A. Riley, Miss H. L. Garrett, Mrs. A. W. Brown, Miss J. J. Ingraham, Miss M. E. Goldan, Miss Amelia Kelsey, Mrs. L. Ward, Mr. M. M. Lowe, Miss M. E. Tank, Miss Ellen Clapp, Miss Maud O'Brien, Miss L. E. Lambourne, Mrs. H. M. Wells, Miss K. L. Glenn, Miss N. S. O'Connor, Miss Helena Phillips, Mrs. M. E. Mallam, Miss M. Creswell, Miss Bettie Murphy, Miss M. Emanuel, Miss M. A. Mulligan, Miss Agnes Boyce, Mrs. W. J. Kelinpeter, Miss Agatha Meehan, Miss Emma J. Taylor, Miss L. C. King, Mr. Louis Leche, Miss N. P. Hero, Miss Nettie Parr, Miss I. Fredericks, Miss B. A. Houghton, Miss Mary J. Dowty, Miss Marguehoren, Miss May Lemkin, Mrs. B. L. Beck, Miss Jessie Wilbur, Miss M. A. Wickes, Miss M. Bridgins, Miss I. R. O'Brien, Miss Eliza Wheaton, Miss H. M. Jourdan, Miss Ruth H. Walsh, Miss K. C. Connolly, Miss Georgia Hodgins, Miss E. Wilbur, Miss S. S. McEnery,
239 Miss P. E. Packard, Miss L. E. Sterling, Miss M. E. Sommerville, Mrs. L. M. Williams, Miss Blanche Cenas, *Miss* Mrs. Josephine Reed, Mrs. C. D. Cooke, Mrs. Cora P. Beecher, Miss Etna Portner, Miss Sidonia Holmes, Mr. J. R. Hutchinson, Miss M. E. Finnerty, Miss E. B. Brown, Miss Irene Rondeau, Miss Minnie Weaver, Miss C. A. Forbes, Miss M. A. Reynolds, Miss Nellie Pickett, Miss M. A. Flanagan, Mrs. C. Reese, Miss L. C. Whitaker, Miss M. J. Dornon, Miss M. J. Kearney, Miss A. L. Beecher, Mrs. W. M. Carroll, Miss M. G. M'Lerenan, Miss D. L. Bostick, Miss Elese Hunter, Miss E. Allen, Miss A. E. M'Lerenan, Mrs. Ellen Hamilton, Miss C. A. Warner, Miss J. E. Martin, Mrs. M. E. Westerfield, Mrs. M. A. Martinez, Miss Mary Clarkson, Miss Ida Halberg, Miss E. Verlander, Mr. C. P. Guichard, Mrs. P. H. Saffold, Miss E. E. Vigers, Miss Amelia Chiapella, Miss Mary E. Penn, Miss Jennie G. Simms, Miss J. C. Berhell, Mr. J. J. O'Connor, Miss L. S. Howard, Mrs. M. E. Fortier, Miss Mathilda Olsen, Miss Ada V. Rosseau, Mr. S. C. Clark, Mrs. L. B. Anderson, Mrs. A. E. Chase, Miss M. A. Gardiner, Miss Maggie Redlich, Miss N. E. Nicholls, Miss E. C. Wheelahan, Mrs. M. E. Holmes, Miss E. F. Hayden, Mrs. M. J. Williams, Miss J. E. Mooney, Miss M. S. Turner, Miss Maggie Crawford, Miss H. E. Lawrence, Miss A. E. Kilgrove, Miss F. S. Dalacy, Miss E. L. Rodriguez, Miss Annie Leddy, Miss M. A. Sullivan, Miss Sallie Payne, Miss Lizzie Keeling, Miss Susan Schreiver, Miss Julia Clapp, Mr. T. L. Preston, Miss H. O. White, Miss L. E. Prest, Miss Fannie I. Dart, Miss E. Gardenghi, Miss Annie Dyer, Miss Emma T. Rosner, Miss Isabelle Ferguson, Miss May Brooks, Miss Sarah H. Evans, Miss May E. Blood, Miss May Clack, Miss M. H. Hallaran, Miss Eliza Clark, Miss C. A. Beck, Mrs. R. Railpon, Miss Kate Kelly, Miss G. G. M'Manus, Miss Annie Theil, Miss A. L. Pascoe, Miss C. W. Bentley, Miss Florence Gordon, Miss May Tallieu, Mrs. G. A. Anderson, Miss Isabelle Ryan, Mrs. F. V. Hooper, Miss Nanon J. Kelly, Miss Mathilda Reuter, Miss N. B. Harthorne,

Miss J. R. Dicks, Miss Lizzie Kelly, Miss Emily Olschner,
240 Miss May A. Leddy, Miss R. T. Murphy, Miss Emma Quick,
Anita Ball, G. Black, Mathilda Bernard, M. Bull, J. Brown, O. Brennan, A. Cornwell, R. Carolan, R. C. Chamberlain, M. M. Campanal, E. M. Clark, B. Carroll, A. J. Dougherty, N. Donovan, Alica Dickson, Mary Daly, Selina Duvic, Emily Dart, M. De Boer, D. Daighan, H. Diamond, E. B. Eagleson, Alica Ellis, Georgie Fountain, A. A Finch, M. Flanagan, J. Gallagher, Kate Hughes, L. Hentich, Kate Howley, B. Hynes, M. Halleran, Irene Hester, Louise Hornbeck, Ida Halberg, E. Hamilton, A. Harper, C. M. Holland, N. Houlgrave, M. Harrison, M. G. Holmes, B. Harthorne, Daisy Jackson, N. James, I. E. Joyce, L. Kilshaw, A. C. Kearney, Mary Kennedy, A. Kennedy, M. D. Kennedy, J. Lahargue, M. A. Michel, L. Mulvey, A. Michel, V. Mayhen, B. Maher, M. D. Moore, M. Michel, Miss Lizzie Neelis, N. E. Nicholls, M. Orrantia, Agatha Pretus, F. Powers, R. M. Pascoe, L. A. Patton, G. Payton, A. Payne, M. Ryan, S. J. Stephens, S. A. Steele, M. Smith, L. Smith, C. M. Spellicy, J. Simon, M. Spellicy, S. Smith, N. Shelly, A. Stickney, C. Stringer, D. Sheenan, Kate Sullivan, Martha Spence, Rosalie Shoeffer, E. J. Taylor, Alice Young, A. Allen, C. Amman, E. Bernard, E. O. Boyle, M. Barrow, B. Booth, Sarah Brooks, B. Blanc, J. Burke, C. Byrne, D. Burt, D. Cosgrove, M. Collins, E. Cure, E. Cronan, M. Caldwell, L. Chevolleau, E. Chineau, M. Carithers, M. T. Cochran, M. Carroll, M. Connelly, M. Collier, M. Duignan, H. Daly, M. Donnelly, C. Denny, B. Doyle, E. Ducts, J. Foster, A. Gould, R. Hevyart, M. Hausman, B. Heavy, J. Jacquet, C. Killelde, J. Kinney, G. H. Kelly, M. Kelly, Mary Kelly, M. Lane, M. Lardner, C. Moffat, E. M'Cabbe, M. M'Cormack, E. M'Ginnis, B. M'Keone, E. Nides, M. Martin, H. O'Connor, M. A. Pickett, E. Rhebacher, M. Reilly, N. J. Rayna, John Ryan, M. Ryan, M. Schreiver, M. J. Stansbury, M. J. Shea, M. White, J. C. Watkins, A. Wilcox, A. Waters, in the full and just sum of one hundred and twenty thousand dollars ($120,000.00), to be paid to the said Lucretia B. Wilder, Mrs. Anna B. Cook, J. E. Seaman,
J. V. Calhoun, J. H. Buckley, T. W. Dyer, Mrs. Mary
241 Stamps, Miss H. A. Suter, Miss H. W. Seymour (now Mrs. Gresham), Miss Susan B. Elder, Miss Armentine Vienne, Miss M. Cusach, Miss B. Woodds, Mr. A. S. Leche, Miss J. E. Linsler, Miss M. E. Pursell, Miss I. D. Pickens, Miss Kate Slack, Miss M. A. Curran, Mr. W. S. M'Elroy, Miss Carrie Forrer, Mrs. A. L. Howard, Miss M. G. Oliver, Miss Fannie A. Stringer, Miss Ida Whitaker, Miss Fannie S. Harby, Miss Louise Bertel, Mr. Vincent Mielly, Miss M. A. Nugent, Miss K. E. Eastman, Miss S. Bloomfield, Miss O. Woodworth, Mrs. Esther Dobie, Mrs. E. C. Hunter, Miss E. C. Dowty, Mr. D. A. Blanchard, Mrs. C. A. Curtis, Miss M. E. M'Loughlin, Miss H. L. Mylotte, M. A. Broderick, Miss M. G. Fischer, Miss B. Furneaux, Miss Ada Jenks, Miss M. H. O'Connor, Miss A. M. Dart, H. B. Folk, Miss Isabella Simmons, Miss Charlotte Stewart, Miss Nellie H. Watson, Miss Sallie Harris, Miss G. I. Lambourne, Miss Jennie Reese, Miss M. L. Martin, Miss J. C. Dodge, Miss Isabelle Levy, Mrs. M. E. M'Donald, Mrs. J. C. Robinson, Miss Eliza Todd, Mrs. M. E.

Taliaferro, Miss Ida Patton, Miss M. A. Ames, Miss F. L. Flemich, Miss Clemence Charles, Miss Oilvia Pitard, Miss M. A. Larkin, Mrs. R. Sulakoski, Miss M. Nevin, Mr. J. H. Heslin, Mrs. Annie Macken, Miss I. B. Grant, Miss E. L. Venables, Miss K. M. Hamblett, Miss Maria Mulvey, Miss A. J. Hamilton, Miss A. Conwell, Miss Annie Sinclair, Miss A. S. Miller, Miss Julia Donovan, Miss H. M. Hewitt, Miss T. A. Sisa, Miss Emma B. Lloyd, Mrs. C. B. Sproule, Miss A. Paddon, Miss R. M. Woodley, Mrs. K. C. M'Cann, Miss M'Cord, Miss Cecilia Coll, Miss Carrie Labatt, Miss Julia Mulvey, Miss Lizzie Barry, Miss Julia Buckley, Miss B. E. Sullivan, Miss Ida Bennett, Miss Mary Walsh, Miss Anna Stokes, Miss Theresa Hartnett, Miss Laura J. Murphy, Mr. A. P. Williams, Miss R. E. Campanel, Miss Amelia Berhel, Miss B. Plicque, Miss Alice Jones, Mrs. C. H. Thezan, Mrs. Sarah B. Allen, Mrs. S. F. Williams, Mrs. C. M. Keppard, Mrs. E. P. M'Carthy, Miss C. C. Kennedy, Miss L. M. White, Mrs. Rosa T. Edmunds, Miss E. V. Eggleston, Miss R. M. Chevallie, Mrs. K. J. Ricker, Mrs. A. E. Jones, Miss Addie M'Cord, Mrs. O. B. Cassanova, Mrs. H. M. Braguiens,
242 Miss Emma Torrey, Miss Georgie Kerns, Miss L. Neelis, Miss M. J. O'Neill, Miss Julia Conroy, Mrs. J. E. Stehle, Mrs. M. Sassinot, Mrs. E. M. Keplinger, Miss K. Divine, Miss Adele Coudrain, Miss M. H. Hill, Miss O. K. Chellet, Miss R. King, Mr. Henry Reggio, Miss C. E. Carolan, Miss S. A. Grant, Miss Josephine Stewart, Mrs. M. L. Hampson, Miss Josephine Hille, Miss H. A. Pittman, Miss Rosa Carolan, Miss Palmyre Cartier, Miss Aline Fabet, Miss Alice Sherlock, Miss M. E. Lyons, Miss Gretta Donovan, Miss Annie Kerwin, Miss Mary Pearson, Miss M. A. Armstrong, Miss J. M. Metaxxa, Miss M. V. Serran, Miss A. E. King, Miss Emma Lacroix, Miss Alice Sheean, Miss Frances O'Connor, Mr. Warren Easton, Miss G. M'Cerran, Miss M. J. Paul, Mrs. Mary Moore, Miss S. V. Redwood, Miss A. M. Hero, Miss C. Nicol, Miss E. V. Relf, Miss Louise Faust, Miss Sallie Boyce, Miss F. L. Smith, Miss V. Russell, Miss Ellen Moran, Miss C. Lichtenstein, Miss A. A. Finch, Miss E. J. Young, Mrs. D. R. Miller, Miss Helen M'Carthy, Miss Mary M'Cann, Miss M. A. Ferguson, Miss Marie L. Points, Miss Lizzie Donovan, Miss Julia Hedges, Mrs. M. F. Gerrard, Miss K. Howley, Dr. Jas. Burns, Miss Antonis Hart, Miss Ella M. Brown, Miss Jane M'Anulty, Miss Marie Peres, Miss Henora Brown, Miss A. F. Duval, Miss Mary L. Barrett, Mr. W. J. Gahan, Mrs. V. Ducatel, Miss Emily Wagner, Miss Kate Toole, Miss Leonie Chevallo, Miss Ellen Carey, Miss Emma Ducoing, Miss A. M. Woods, Mr. Gustave Andre, Mrs. M. A. Doriocourt, Miss Ellen Quayle, Miss Rebecca Smith, Miss M. Bayhi, Miss Laura C. Harris, Mr. C. A. Barnes, Mrs. A. E. Van Camp, Mrs. Paul Ducatel, Miss Louise Van Dycke, Miss Eugenie Desdunes, Miss C. Hubbard, Mrs. Ann Bell, Miss M. O. Carter, Miss Rosa T. Moore, Miss Julia White, Miss Edith Harrison, Miss Susan Smith, Miss F. F. Huberwald, Mrs. H. Chaery, Miss Louise Lynch, Miss Lizzie Kennedy, Miss Mary Murphy, Mrs. Sylvia Easton, Mr. E. H. Trepagnier, Mrs. M. F. Stevens, Miss H. M'Carthy, Miss M. Marshall, Miss M. A. Stewart, Miss Lorenzo Bertus, Miss Mary Gordon, Miss M. E. Anderson,

Miss K. Delesdernier, Miss Alice Clark, Miss Ellen Kennedy,
243 Miss Rita C. Monrose, Miss Kate Quaid, Miss E. B. Thomas, Mr. Ulric Bettison, Miss I. Warner, Mr. T. S. O'Sullivan, Miss Ellen Gow, Miss M. S. Wilson, Mrs. A. L. Savio, Miss M. E. Cuggy, Miss Lucy Tallon, Miss Delphine Points, Miss Annie Scott, Miss K. J. Hughes, Miss Annie Sheean, Miss Emma Prados, Miss Sophie Blancq, Miss Julia Chevillon, Miss Mary B. Clark, Mrs. Parmela Cuculla, Miss Rose Dione, Miss Esther Brando, Mr. A. B. Chandler, Miss Bridget Nolan, Miss J. A. Mayberry, Miss C. L. Stewart, Miss K. L. Magnon, Miss Kate E. Murphy, Miss Rebecca Fortune, Miss Marcella Curley, Miss M. O. Reynolds, Miss Mary M'Elligott, Miss A. E. O'Brien, Miss Mary Moore, Miss N. D. Cooper, Miss Jane Donelly, Miss J. Fitzgerald, Miss Mary L. Stokes, Mrs. H. Kilshaw, Miss J. F. Cripps, Miss M. A. Murphy, Miss E. O'Hara, Miss S. Llambias, Mrs. C. Collerton, Miss M. A. Riley, Miss H. L. Garrett, Mrs. A. W. Brown, Miss J. J. Ingraham, Miss M. E. Golden, Miss Amelia Kelsey, Mrs. L. Ward, Mr. M. M. Lowe, Miss M. E. Tank, Miss Ellen Clapp, Miss Maude O'Brien, Miss L. E. Lambourne, Mrs. H. M. Wells, Miss K. L. Glenn, Miss N. S. O'Connor, Miss Helena Phillips, Mrs. M. E. Mallam, Miss M. Creswell, Miss Bettie Murphy, Miss M. Emanuel, Miss M. A. Mulligan, Miss Agnes Boyce, Mrs. W. J. Kelinpeter, Miss Agatha Mechan, Miss Emma J. Taylor, Miss L. C. King, Mr. Louis Leche, Miss N. P. Hero, Miss Nettie Parr, Miss I. Fredericks, Miss V. A. Houghton, Miss Mary J. Dowty, Miss Margaret Horan, Miss May Lemkin, Mrs. B. L. Beck, Miss Jessie Wilbur, Miss M. A. Wickes, Miss M. Bridgins, Miss I. E. O'Brien, Miss Eliza Wheaton, Miss H. M. Jourdan, Miss Ruth H. Walsh, Miss K. C Connelly, Miss Georgia Hodgins, Miss E. Wilbur, Miss S. S. M'Enery, Miss P. E. Packard, Miss L. E. Sterling, Miss M. E. Sommerville, Mrs. L. M. Williams, Miss Blanche Cenas, Mrs. Josephine Reed, Mrs. C. B. Cooke, Mrs. Cora P. Beecher, Miss Etna Portner, Miss Sidonia Holmes, Mr. J. J. Hutchinson, Miss M. E. Finnerty, Miss E. B. Brown, Miss Irene Rondeau, Miss Minnie Weaver, Miss C. A. Forbes, Miss M. A. Reynolds, Miss Nellie
244 Pickett, Miss M. A. Flanagan, Mrs. C. Reese, Miss L. C. Whitaker, Miss M. J. Darnon, Miss M. J. Kearney, Miss A. L. Beecher, Mrs. W. M. Carroll, Miss M. G. M'Lerenan, Miss D. L. Bostick, Miss Elese Hunter, Miss E. Allen, Miss A. E. M'Lerenan, Miss Ellen Hamilton, Miss C. A. Warner, Miss J. E. Martin, Mrs. M. E. Westerfield, Mrs. M. A. Martinez, Miss Mary Clarkson, Miss Ida Halberg, Miss E. Verlander, Mr. C. P. Guichard, Mrs. P. H. Saffold, Miss E. E. Vigers, Miss Amelia Chiapella, Miss Mary E. Penn, Miss Jennie G. Simms, Miss J. C. Berhel, Mr. J. J. O'Connor, Miss L. S. Howard, Mrs. M. E. Fortier, Miss Mathilda Olsen, Miss Ada V. Russell, Mr. S. C. Clark, Mrs. L. B. Anderson, Mrs. A. E. Chase, Miss M. A. Gardiner, Miss Maggie Redlich, Miss N. E. Nicholls, Miss E. C. Wheelahan, Mrs. M. E. Holmes, Miss E. F. Hayden, Mrs. M. J. Williams, Miss J. E. Mooney, Miss M. J. Turner, Miss Maggie Crawford, Miss H. E. Lawrence, Miss A. E. Kilgrove, Miss F. S. Dalacy, Miss E. L. Rodriguez, Miss Annie Leddy, Miss M. A. S. Sullivan, Miss Sallie Payne, Miss Lizzie Keeling, Miss Susan

Schriever, Miss Julia Clapp, Mr. T. L. Preston, Miss H. O. White, Miss L. E. Prest, Miss Fannie I. Dart, Miss E Gardenghi, Miss Anna Dyer, Miss Emma T. Rosner, Miss Isabelle Ferguson, Miss May Brooks, Miss Sarah H. Evans, Miss May E. Blood, Miss May Clapp, Miss M. H. Hallaran, Miss Eliza Clark, Miss C. A. Beck, Mrs. R. Railpon, Miss Kate Kelly, Miss C. G. M'Manus, Miss Annie Theil, Miss A. L. Pascoe, Miss C. W. Bentley, Miss Florence Gordon, Miss Mary A. Tallieu, Mrs. G. A. Anderson, Miss Isabelle Ryan, Mrs. F. V. Hooper, Miss Nanon J. Kelly, Miss Mathilda Reuter, Miss N. B. Harthorne, Mrs. J. R. Dicks, Miss Lizzie Kelly, Miss Emily Olschner, Miss May A. Leddy, Miss R. T. Murphy, Miss Emma Quick, Anita Ball, G. Black, Mathilda Bernard, M. Bull, J. Brown, O. Brenan, A. Cornwell, R. Carolan, R. C. Chamberlain, M. M. Campanel, E. M. Clark, B. Carroll, A. J. Dougherty, M. Donovan, Alica Dickson, Mary Daly, Selina Duvic, Emily Dart, M. De Boer, D. Daignan, H. Diamond, E. B. Aagleson, Alica Ellis,
245 Georgia Fountain, A. A. Finch, M. Flanagan, J. Gallagher, Kate Hughes, L. Hentich, Kate Howley, B. Hynes, M. Halloran, Irene Hester, Louise Hornbeck, Ida Halberg, E. Hamilton, A. Harper, C. M. Holland, N. Houlgrave, M. Harrison, M. G. Holmes, B. Harthorne, Daisy Jackson, N. James, I. E. Joyce, L. Kilshaw, A. C. Kearney, Mary Kennedy, A. Kennedy, M. D. Kennedy, J. Lahargue, N. A. Michel, L. Mulvey, A. Michel, B. Mayhen, B. Maher, M. D. Moore, M. Michel, Lizzie Neelis, N. E. Nicholls, M. Orrantia, Agatha Pretus, F. Powers, R. M. Pascoe, L. A. Patton, G. Peyton, A. Payne, M. Ryan, S. J. Stephens, S. A. Steele, M. Smith, L. Smith, C. M. Spellicy, J. Simon, M. Spellicy, S. Smith, N. Shelly, A. Stickney, C. Stringer, D. Sheean, Kate Sullivan, Martha Spence, Rosalie Shoeffer, E. J. Taylor, Alice Young, B. Allen, C. Amman, E. Bernard, E. O. Boyle, M. Barrow, B. Booth, Sarah Brooks, B. Blanc, J. Burke, C. Byrne, D. Burt, D. Cosgrove, M. Collins, E. Cure, E. Cronan, M. Caldwell, L. Chevolleau, E. Chineau, M. Carithers, M. T. Cochran, M. Carroll, M. Connelly, M. Collier, M. Duignan, H. Daly, M. Donnelly, C. Denny, B. Doyle, E. Ducts, J. Foster, A. Gould, R. Hevyart, M. Hausman, B. Heavy, J. Jacquet, C. Killelae, J. Kinney, G. H. Kelly, M. Kelly, Mary Kelly, M. Lane, M. Lardner, C. Moffatt, E. M'Cabe, M. M'Cormack, E. M'Ginnis, B. M'Keone, E. Nides, M. Martin, H. O'Connor, M. A. Pickett, E. Rhobacher, M. Riley, N. J. Rayna, John Ryan, M. Ryan, M. Schreiver, M. J. Stansbury, M. Shea, M. White, J. C. Watkins, A. Wilcox, and A. Waters, their certain attorneys, executors, administrators, and assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 10th day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas late-, at a supreme court of the State of Louisiana, in a suit depending in said court between the State of Louisiana on the relation of Miss Lucretia B. Wilder, Mrs. Anna B. Cook, J. E. Sea-

man, J. V. Calhoun, J. H. Buckley, T. W. Dyer, Mrs. Mary
246 Stamps, Miss H. A. Suter, Miss H. W. Seymour (now Mrs. Gresham), Miss Susan B. Elder, Miss Armentine Vienne, Miss M. Cusach, Miss B. Woods, Mr. A. S. Leche, Miss J. E. Linsler, Miss M. E. Pursell, Miss I. D. Pickens, Miss Kate Slack, Miss M. A. Curran, Mr. W. S. M'Elroy, Miss Carrie Forrer, Mrs. A. L. Howard, Miss M. G. Oliver, Miss Fannie A. Stringer, Miss Ida Whitaker, Miss Fannie S. Harby, Miss Louis- Berthel, Mr. Vincent Mielly, Miss M. A. Nugent, Miss K. E. Eastman, Miss S. Bloomfield, Miss O. Woodworth, Mrs. Esther Dobie, Mrs. E. C. Hunter, Miss E. C. Dowty, Mr. D. A. Blanchard, Mrs. C. A. Curtis, Miss M. E. M'Loughlin, Miss H. L. Mylotte, Miss M. A. Broderick, Miss M. G. Fischer, Miss B. Furneaux, Miss Ada Jenks, Miss M. H. O'Connor, Miss A. M. Dart, H. B. Folk, Miss Isabella Simmons, Miss Charlotte Stuart, Miss Nellie H. Watson, Miss Sallie Harris, Miss G. I. Lambourne, Miss Jennie Reese, Miss M. L. Martin, Miss J. C. Dodge, Miss Isabelle Levy, Mrs. M. E. M'Donald, Mrs. J. C. Robinson, Miss Eliza Todd, Mrs. M. E. Taliaferro, Miss Ida Patton, Miss M. A. Ames, Miss F. L. Flemich, Miss Clemence Charles, Miss Olivia Pitard, Miss M. A. Larkin, Miss R. Sulakolski, Miss M. Nevin, Mr. J. H. Heslin, Mrs. Annie Macken, Miss I. B. Grant, Miss E. L. Venables, Miss K. M. Hamblett, Miss Maria Mulvey, Miss A. J. Hamilton, Miss A. Conwell, Miss Annie Sinclaire, Miss A. S. Miller, Miss Julia Donovan, Miss M. H. Hewitt, Miss T. A. Sisa, Miss Emma B. Lloyd, Mrs. C. B. Sproule, Miss A. Paddon, Miss R. M. Woodley, Mrs. K. C. M'Cann, Miss M. M'Cord, Miss Cecilia Coll, Miss Carrie Labatt, Miss Julia Mulvey, Miss Lizzie Barry, Miss Julia Buckley, Miss B. E. Sullivan, Miss Ida Bennett, Miss Mary Walsh, Miss Anna Stokes, Miss Theresa Hartnett, Miss Laura J. Murphy, Mr. A. P. Williams, Miss R. E. Campanel, Miss Amelia Berhel, Miss B. Plicque, Miss Alice Jones, Mrs. C. H. Thezan, Mrs. Sarah B. Allen, Mrs. S. F. Williams, Mrs. C. M. Keppard, Mrs. E. P. M'Carthy, Miss C. C. Kennedy, Miss L. M. White, Miss Rosa T. Edmunds, Miss E. B. Egleston, Miss R. M. Chevallie,
247 Mrs. K. J. Ricker, Mrs. A. E. Jones, Miss Addie M'Cord, Mrs. O. B. Cassanova, Mrs. H. M. Braguiens, Miss Emma Torrey, Miss Georgie Kerns, Miss L. Neelis, Miss M. J. O'Neill, Miss Julia Conroy, Mrs. J. E. Stehle, Miss M. Sassinot, Mrs. E. M. Keplinger, Mrs. K. Divine, Miss K. Divine, Miss Adele Coudrain, Miss M. H. Hill, Miss O. K. Chellet, Miss R. King, Mr. Henry Reggio, Miss C. E. Carolan, Miss S. A. Grant, Miss Josephine Stewart, Mrs. M. L. Hampson, Miss Josephine Hille, Miss H. A. Pittman, Miss Rosa Carolan, Miss Palmyre Cartier, Miss Aline Ribet, Miss Alice Sherlock, Miss M. E. Lyons, Miss Gretta Donovan, Miss Annie Kerwin, Miss Mary Pearson, Miss M. A. Armstrong, Miss J. M. Metaxxa, Miss M. V. Serran, Miss A. E. King, Miss Emma Lacroix, Miss Alice Sheean, Miss Frances O'Connor, Mr. Warren Easton, Miss G. M'Cerran, Miss M. J. Paul, Mrs. Mary Moore, Miss S. V. Redwood, Miss A. M. Hero, Miss C. Nicol, Miss E. V. Relf, Miss Louise Faust, Miss Sallie Boyce, Miss F. L. Smith, Miss V. Russell, Miss Ellen Moran, Miss C. Lichtenstein, Miss A. A. Finch, Miss E. J. Young, Mrs. D. R. Miller,

Miss Helen M'Carthy, Miss Mary M'Cann, Miss M. A. Ferguson, Miss Marie L. Points, Miss Lizzie Donovan, Miss Julia Hedges, Mrs. M. F. Gerrard, Miss K. Howley, Dr. Jas. Burns, Miss Antonis Hart, Miss Ella M. Brown, Miss Jane M'Anulty, Miss Marie Peres, Miss Honora Brown, Miss A. F. Duval, Miss Mary L. Barrett, Mr. W. J. Gahan, Mrs. V. Ducatel, Miss Emily Wagner, Miss Kate Toole, Miss Leone Chevallo, Miss Ellen Carey, Miss Emma Ducoing, Miss A. M. Woods, Mr Gustave Andry, Mrs. M. A. Doriocourt, Miss Ellen Quayle, Miss Rebecca Smith, Miss M. Bayhi, Miss Laura C. Harris, Mr. C. A. Barnes, Mrs. A. E. Van Camp, Mrs. Paul Ducatel, Miss Louise Van Dycke, Miss Eugenie Desdunes, Miss C. Hubbard, Mrs. Ann Bell, Miss M. O. Carter, Miss Rosa T. Moore, Miss Julia White, Miss Edith Harrison, Miss Susan Smith, Miss F. F. Huberwald, Mrs. H. Chaery, Miss Louise Lynch, Miss Lizzie Kennedy, Miss Mary Murphy, Mrs. Sylvia Easton, Mr. E. H. Trepagnier, Mrs. M. F.
248 Stevens, Miss H. M'Carthy, Miss M. Marshall, Miss M. A. Stewart, Miss Lorenzo Bertus, Miss Mary Gordon, Miss M. E. Anderson, Miss K. Delesdernier, Miss Alice Clark, Miss Ellen Kennedy, Miss Rita C. Monrose, Miss Kate Quaid, Miss E. B. Thomas, Mr. Ulric Bettison, Miss I. Warner, Mr. T. J. O'Sullivan, Miss Ellen Gow, Miss M. S. Wilson, Mrs. A. L. Savio, Miss M. E. Cuggy, Miss Lucy Tallon, Miss Delphine Points, Miss Annie Scott, Miss K. J. Hughes, Miss Annie Sheean, Miss Emma Prados, Miss Sophie Blancq, Miss Julia Chevillon, Miss Mary B. Clark, Mrs. Parmela Cuculla, Miss Rosa Dione, Miss Esther Brando, Mr. A. B. Chandler, Miss Bridget Nolan, Miss J. A. Mayberry, Miss C. L. Stewart, Miss K. L. Magnon, Miss Kate E. Murphy, Miss Rebecca Fortune, Miss Marcella Curley, Miss M. O. Reynolds, Miss Mary M'Elligott, Miss A. E. O'Brien, Miss Mary Moore, Miss N. D. Cooper, Miss Jane Donelly, Miss J. Fitzgerald, Miss Mary L. Stokes, Mrs. H. Kilshaw, Miss J. F. Cripps, Miss M. A. Murphy, Miss E. J. O'Hara, Miss S. Llambias, Mrs. C. Collerton, Miss M. A. Riley, Miss H. L. Garrett, Mrs. A. W. Brown, Miss J. J. Ingraham, Miss M. E. Golden, Miss Amelia Kelsey, Mrs. L. Ward, Mr. M. M. Lowe, Miss M. E. Tank, Miss Ellen Clapp, Miss Maude O'Brien, Miss L. E. Lambourne, Mrs. H. M. Wells, Miss K. L. Glenn, Miss N. S. O'Connor, Miss Helena Phillips, Mrs. M. E. Mallam, Miss M. Creswell, Miss Bettie Murphy, Miss M. Emanuel, Miss M. A. Mulligan, Miss Agnes Boyce, Mrs. W. J. Kelinpeter Miss Agatha Meehan, Miss Emma J. Taylor, Miss L. C. King, Mr. Louis Leche, Miss N. P. Hero, Miss Nettie Parr, Miss I. Fredericks, Miss B. A. Houghton, Miss Mary J. Dowty, Miss Margaret Horan, Miss May Lemkin, Mrs. B. L. Beck, Miss Jessie Wilbur, Miss M. A. Wickes, Miss M. Bridgins, Miss I. E. O'Brien, Miss Eliza Wheaton, Miss H. M. Jourdan, Miss Ruth H. Walsh, Miss K. C. Connelly, Miss Georgie Hodgins, Miss E. Wilbur, Miss S. S. M'Enery, Miss P. E. Packard, Miss L. E. Sterling, Miss M. E. Sommerville, Mrs. L. M. Williams, Miss Blanche Cenas, Mrs. Josephine Reed, Mrs. C. D. Cooke, Mrs. Cora P. Beecher, Miss Etna Portner, Miss Sidonia Holmes, Mr.
249 J. R. Hutchinson, Miss M. E. Finnerty, Miss E. B. Brown, Miss Irene Rondeau, Miss Minnie Weaver, Miss C. A.

Forbes, Miss M. A. Reynolds, Miss Nellie Pickett, Miss M. A. Flanagan, Mrs. C. Reese, Miss L. C. Whitaker, Miss M. J. Dornon, Miss M. J. Kearney, Miss A. L. Beecher, Mrs. W. M. Carroll, Miss M. G. M'Lerenan, Miss D. L. Bostick, Miss Else Hunter, Miss E. Allen, Miss A. E. M'Lirenan, Mrs. Ellen Hamilton, Miss C. A. Warner, Miss J. E. Martin, Mrs. M. E. Westerfield, Mrs. M. A. Martinez, Miss Mary Clarkson, Miss Ida Halberg, Miss E. Verlander, Mr. C. P. Guichard, Mrs. P. H. Saffold, Miss E. E. Vigers, Miss Amelia Chiapella, Miss Mary E. Penn, Miss Jennie G. Simms, Miss J. C. Berhel, Mr. J. J. O'Connor, Miss L. S. Howard, Mrs. M. E. Fortier, Miss Mathilda Ohlsen, Miss Ada V. Rosseau, Mr. S. S. Clark, Mrs. L. B. Anderson, Mrs. A. E. Chase, Miss M. A. Gardiner, Miss Maggie Redlich, Miss N. E. Nicholls, Miss E. C. Wheelahan, Mrs. M. E. Holmes, Miss E. F. Hayden, Mrs. M. J. Williams, Miss J. E. Mooney, Miss M. J. Turner, Miss Maggie Crawford, Miss H. E. Lawrence, Miss A. E. Kilgrove, Miss F. S. Dalacy, Miss E. L. Rodriguez, Miss Annie Leddy, Miss M. A. Sullivan, Miss Sallie Payne, Miss Lizzie Keeling, Miss Susan Schreiver, Miss Julia Clapp, Mr. T. L. Preston, Miss H. O. White, Miss L. E. Prest, Mrs. Fannie I. Dart, Miss E. Gardenghi, Miss Annie Dyer, Miss Emma T. Rosner, Miss Isabelle Ferguson, Miss May Brooks, Miss Sarah H. Evans, Miss May E. Blood, Miss May Clack, Miss M. H. Hallaran, Miss Eliza Clark, Miss C. A. Beck, Mrs. R. Railpon, Miss Kate Kelly, Miss C. G. M'Manus, Miss Annie Theil, Miss A. L. Pascoe, Miss C. W. Bentley, Miss Florence Gordon, Miss Mary A. Tallieu, Mrs. G. Anderson, Miss Isabel Ryan, Mrs. F. V. Hooper, Miss Nanon J. Kelly, Miss Mathilda Reuter, Miss N. B. Harthorne, Mrs. J. R. Dicks, Miss Lizzie Kelley, Miss Emily Oischner, Miss May A. Leddy, Miss R. T. Murphy, Miss Emma Quick, Anita Ball, G. Black, Matilda Bernard, M. Bull, J. Brown, O. Brennan, A. Cornwell, R. Carolan, R. C. Chamberlain, M. M. Campanel, E. M. Clark, B. Carroll, A. J. Dougherty, M. Donovan, Alica Dickson, Mary Daly, Selina Duvic, Emily Dart, M. De Boer, D. Daignan,
250 H. Diamond, E. B. Eagleson, Alica Ellis, Georgie Fountain, A. A. Finch, M. Flanagan, J. Gallagher, Kate Hughes, L. Hentich, Kate Howley, B. Hynes, M. Halloran, Irene Hester, Louise Hornbeck, Ida Halberg, E. Hamilton, A. Harper, C. M. Holland, N. Houlgrave, M. Harrison, M. G. Holmes, B. Harthorne, Daisy Jackson, N. James, I. E. Joyce, L. Kilshaw, A. C. Kearney, Mary Kennedy, A. Kennedy, M. D. Kennedy, J. Lahargue, M. A. Michel, L. Mulvey, A. Michel, B. Mayhen, B. Maher, M. D. Moore, M. Michel, Lizzie Neelis, N. E. Nicholls, M. Orrantia, Agatha Pretus, F. Powers, R. M. Pascoe, L. A. Paton, G. Peyton, A. Payne, M. Ryan, S. J. Stephens, S. A. Steele, M. Smith, L. Smith, C. M. Spellicy, J. Simon, M. Spellicy, S. Smith, N. Shelly, A. Stickney, C. Stringer, D. Sheean, Kate Sullivan, Martha Spence, Rosalie Shoeffer, E. J. Taylor, Alice Young, B. Allen, C. Amman, E. Bernard, E. O. Boyle, M. Barrow, B. Booth, Sarah Brooks, B. Blanc, J. Burke, C. Byrne, D. Burt, D. Cosgrove, M. Collins, E. Cure, E. Cronan, M. Caldwell, L. Chevoileau, E. Chineau, M. Caruthers, M. T. Cochran, M. Carroll, M. Connelly, M. Collier, M.

Duignan, H. Daly, M. Donnelly, C. Denny, B. Doyle, E. Ducts, J. Foster, A. Gould, R. Hevyart, M. Hausman, B. Heavy, J. Jacquet, C. Killelae, G. H. Kelly, M. Kelly, Mary Kelly, M. Lane, M. Lardner, C. Moffat, E. M'Cabe, M. M'Cormack, E. M'Ginnis, B. M'Keone, E. Nides, M. Martin, H. O'Connor, M. A. Pickett, E. Rhobacher, M. Riley, N. J. Rayna, John Ryan, M. Schreiver, M. J. Stansbury, M. Shea, M. White, J. C. Watkins, A. Wilcox, A. Waters, relators in said supreme court of the State of Louisiana and defendants in error in this court, and The Board of Liquidation of the City Debt, defendant in said supreme court of the State of Louisiana and plaintiff in error in this court, The Drainage Commission of New Orleans, intervenor, No. 13034 of the docket of the said supreme court of the State of Louisiana, a judgment was rendered against the said Board of Liquidation of the City Debt, and the said Board of Liquidation of the City Debt having obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the judgment
251 in the aforesaid suit, and a citation directed to the said Miss Lucretia B. Wilder, Mrs. Anna B. Cook, J. E. Seaman, J. V. Calhoun, J. H. Buckley, T. W. Dyer, Mrs. Mary Stamps, Miss H. A. Suter, Miss H. W. Seymour (now Mrs. Gresham), Miss Susan B. Elder, Miss Armentine Vienne, Miss M. Cusach, Miss B. Woods, Mr. A. S. Leche, Miss J. E. Linsler, Miss M. E. Pursell, Miss I. D. Pickens, Miss Kate Slack, Miss M. A. Curran, Mr. W. S. M'Elroy, Miss Carrie Forrer, Mrs. A. L. Howard, Miss M. G. Oliver, Miss Fannie A. Stringer, Miss Ida Whitaker, Miss Fannie S. Harby, Miss Louise Bertel, Miss Vincent Mielly, Miss M. A. Nugent, Miss K. E. Eastman, Miss S. Bloomfield, Miss O. Woodworth, Mrs. Esther Dobie, Mrs. E. C. Hunter, Miss E. C. Dowty, Mr. D. A. Blanchard, Mrs. C. A. Curtis, Miss M. E. M'Loughlin, Miss H. L. Mylotte, Miss M. A. Broderick, Miss M. G. Fischer, Miss B. Furneaux, Miss Ada Jenks, Miss M. H. O'Connor, Miss A. M. Dart, H. B. Folk, Miss Isabella Simmons, Miss Charlotte Stuart, Miss Nellie H. Watson, Miss Sallie Harris, Miss G. I. Lambourne, Miss Jennie Reese, Miss M. L. Martin, Miss J. C. Dodge, Miss Isabella Levy, Mrs. M. E. M'Donald, Mrs. J. C. Robinson, Miss Eliza Todd, Mrs. M. E. Taliafero, Miss Ida Patton, Miss M. A. Ames, Miss F. L. Flemich, Miss Clemence Charles, Miss Odvia Pitard, Miss M. A. Larkin, Mrs. R. Sulakoski, Miss M. Nevin, Mr. J. H. Heslin, Mrs. Annie Macken, Miss I. B. Grant, Miss E. L. Venables, Miss K. L. Hamblett, Miss Maria Mulvey, Miss A. J. Hamilton, Miss A. Conwell, Miss Annie Sinclair, Miss A. S. Miller, Miss Julia Donovan, Miss H. M Hewitt, Miss T. A. Sissa, Miss Emma B. Lloyd, Mrs. C. B. Sproule, Miss A. Paddon, Miss R. M. Woodley, Mrs. K. C. M'Cann, Miss M. M'Cord, Miss Cecilia Coll, Miss Carrie Labatt, Miss Julia Mulvey, Miss Lizzie Barry, Miss Julia Buckley, Miss B. E. Sullivan, Miss Ida Bennett, Miss Mary Wash, Miss Anna Stokes, Miss Theresa Hartnett, Miss Laura J. Murphy, Mr. A. P. Williams, Miss R. E. Campanell, Miss Amelia Berhel, Miss B. Plicque, Miss Alice Jones, Mrs. C. H. Thezen, Mrs. Sarah B. Allen, Mrs. S. F. Williams, Mrs. C. M. Keppard,
252 Mrs. E. P. M'Carthy, Miss C. C. Kennedy, Miss L. M. White, Mrs. Rosa T. Edmunds, Miss E. B. Egleston, Miss R. M.

Chevallie, Mrs. K. J. Ricker, Mrs. A. E. Jones, Miss Addie M'Cord, Mrs. O. B. Cassanova, Mrs. H. M. Braguiens, Miss Emma Torrey, Miss Georgie Kerns, Miss L. Neelis, Miss M. J. O'Neill, Miss Julia Conroy, Mrs. J. E. Stehle, Miss M. Sassinot, Mrs. E. M. Keplinger, Miss K. Divine, Miss Adele Coudrain, Miss M. H. Hill, Miss O. K. Chellet, Miss R. King, Mr. Henry Reggio, Miss C. E. Carolan, Miss S. A. Grant, Miss Josephine Stewart, Mrs. M. L. Hampson, Miss Josephine Hille, Miss H. A. Pittman, Miss Rosa Carolan, Mrs. Palmire Cartier, Miss Aline Ribet, Miss Alice Sherlock, Miss M. E. Lyons, Miss Gretta Donovan, Miss Annie Kerwin, Miss Mary Pearson, Miss M. A. Armstrong, Miss J. M. Mettaxa, Miss M. V. Serran, Miss A. E. King, Miss Emma Lacroix, Miss Alice Sheean, Miss Frances O'Connor, Mr. Warren Easton, Miss G. M'Cerran, Miss M. J. Paul, Mrs. Mary Moore, Miss S. V. Redwood, Miss A. M. Hero, Miss C. Nicol, Miss E. V. Relf, Miss Louise Faust, Miss Sallie Eaves, Miss F. L. Smith, Miss V. Russell, Miss Ellen Moran, Miss C. Lichtenstein, Miss A. A. Finch, Miss E. J. Young, Mrs. D. E. Miller, Miss Helen M'Carthy, Miss Mary M'Cann, Miss M. A. Ferguson, Miss Marie L. Points, Miss Lizzie Donovan, Miss Julia Hedges, Mrs. M. F. Gerrard, Miss K. Howley, Dr. Jas. Burns, Miss Antonis Hart, Miss Ella M. Brown, Miss Jane M'Anulty, Miss Marie Peres, Miss Henora Brown, Miss A. F. Duval, Miss Mary L. Barrett, Mr. W. J. Gahan, Mrs. V. Ducatel, Miss Emily Wagner, Miss Kate Toole, Miss Leonie Chevallo, Miss Ellen Carey, Miss Emma Ducoing, Miss A. M. Woods, Mr. Gustave Audry, Mrs. M. A. Doriocourt, Miss Ellen Quayle, Miss Rebecca Smith, Miss M. Bayhi, Miss Laura C. Harris, Mr. C. A. Barnes, Mrs. A. E. Van Camp, Mrs. Paul Ducatel, Miss Louise Van Dycke, Miss Eugenie Desdunes, Miss C. Hubbard, Mrs. Ann Bell, Miss M. O. Carter, Miss Rosa T. Moore, Miss Julia White, Miss Edith Harrison, Miss Susan Smith, Miss F. F. Huberwald, Mrs. H. Chaery, Miss Louise Lynch, Miss Lizzie Kennedy, Miss Mary Murphy, Mrs. Sylvia Easton, Mr. E. H. Trepagnier, Mrs. M. F. Stevens, Miss

253 H. M. M'Carthy, Miss M. Marshall, Miss M. A. Stewart, Miss Lorenza Bertus, Miss Mary Gordon, Miss M. E. Anderson, Miss K. Delesdernier, Miss Alice Clark, Miss Ellen Kennedy, Miss Rita C. Monrose, Miss Kate Quaid, Miss E. B. Thomas, Mr. Ulric Bettison, Miss I. Warner, Mr. T. J. O'Sullivan, Miss Ellen Gow, Miss M. S. Wilson, Mrs. A. L. Savio, Miss M. E. Cuggy, Miss Lucy Tallon, Miss Delphine Points, Miss Annie Scott, Miss K. J. Hughes, Miss Anna Sheean, Miss Emma Prados, Miss Sophie Blancq, Miss Julia Chevillon, Miss Mary B. Clark, Mrs. Parmela Cuculla, Miss Rosa Dione, Miss Esther Brando, Mr. A. B. Chandler, Miss Bridget Nolan, Miss J. A. Mayberry, Miss C. L. Stewart, Miss K. L. Magnon, Miss Kate E. Murphy, Miss Rebecca Fortune, Miss Marcella Curley, Miss M. O. Reynolds, Miss Mary M'Elligott, Miss A. E. O'Brien, Miss Mary Moore, Miss M. D. Cooper, Miss Jane Donnelly, Miss J. Fitzgerald, Miss Mary L. Stokes, Mrs. H. Kilshaw, Miss J. F. Cripps, Miss M. A. Murphy, Miss E. J. O'Hara, Miss S. Llambias, Mrs. C. Collerton, Miss M. A. Riley, Miss H. L. Garrett, Mrs. A. W. Brown, Miss J. J. Ingraham, Miss M. E.

Golden, Miss Amelia Kelsey, Mrs. L. Ward, Mr. M. M. Lowe, Miss M. E. Tank, Miss Ellen Clapp, Miss Maude O'Brien, Miss L. E. Lambourne, Mrs. H. M. Wells, Miss K. L. Glenn, Miss N. S. O'Connor, Miss Helena Phillips, Miss M. E. Mallam, Miss M. Creswell, Miss Bettie Murphy, Miss M. Emanuel, Miss M. A. Mulligan, Miss Agnes Boyce, Mrs. W. J. Kelinpete., Miss Agatha Meehan, Miss Emma J. Taylor, Miss L. C. King, Mr. Lewis Leche, Miss M. P. Hero, Miss Nettie Parr, Miss I. Fredericks, Miss B. A. Houghton, Miss Mary J. Dowty, Miss Margaret Horen, Miss May Lemkin, Mrs. B. L. Beck, Miss Jessie Wilbur, Miss M. A. Wickes, Miss M. Bridgens, Miss I. E. O'Brien, Miss Eliza Wheaton, Miss H. M. Jourdan, Miss Ruth H. Walsh, Miss K. C. Connelly, Miss Georgia Hodgins, Miss E. Wilbur, Miss S. S. M'Enery, Miss P. E. Packard, Miss L. E. Sterling, Miss M. E. Sommerville, Mrs. L. M. Williams, Miss Blanche Cenas, Mrs. Josephine Reed, Mrs. C. D. Cook, Mrs. Cora P. Beecher, Miss Etna Portner, Miss Cedonia Holmes, Mr. J. R. Hutchinson, Miss M. E. Finnerty, Miss E. B. Brown, Miss Irene Rondeau, Miss Minnie Weaver, Miss C. A. Forbes, Miss M. A. Reynolds, Miss Nellie
254 Pickett, Miss M. A. Flanagan, Mrs. C. Reese, Miss L. C. Whitaker, Miss M. J. Dornan, Miss M. J. Kearney, Miss A. L. Beecher, Mrs. W. M. Carroll, Miss M. G. M'Lerenan, Miss D. L. Bostick, Miss Elese Hunter, Miss E. Allen, Miss A. E. M'Lirenan, Mrs. Ellen Hamilton, Miss C. A. Warner, Miss J. E. Martin, Mrs. M. E. Westerfield, Mrs. M. A. Martinez, Miss Mary Clarkson, Miss Ida Halberg, Miss E. Verlander, Mr. C. P. Guichard, Mrs. P. H Satfold, Miss E. E. Vigers, Miss Amelia Chiapella, Miss Mary E. Penn, Miss Jennie G. Simms, Miss J. C. Berbel, Mr. J. J. O'Connor, Miss L. S. Howard, Mrs. M. E. Fortier, Miss Mathilda Ohlsen, Miss Ada V. Rosseau, Mr. S. C. Clark, Mrs. L. B. Anderson, Mrs. A. E. Chase, Miss M. A. Gardiner, Miss Maggie Redlich, Miss M. E. Nicholls, Miss E. C. Wheelahan, Mrs. M. E. Holmes, Mrs. E. F. Hayden, Mrs. M. J. Williams, Miss J. E. Mooney, Miss M. J. Turner, Miss Maggie Crawford, Miss H. E. Lawrence, Miss A. E. Kilgrove, Miss F. S. Delacy, Miss E. L. Rodriguez, Miss Annie Leddy, Miss M. A. Sullivan, Miss Sallie Payne, Miss Lizzie Keeling, Miss Susan Schreiver, Miss Julia Clapp, Mr. T. L. Preston, Mrs. H. O. White, Miss L. E. Prest, Miss Fannie I. Dart, Miss E. Gardenghi, Miss Annie Dyer, Miss Emma T. Rosner, Miss Isabel Ferguson, Miss May Brooks, Miss Sarah H. Evans, Miss May E. Blood, Miss May Clack, Miss M. H. Hallaran, Miss Eliza Clark, Miss C. A. Beck, Mrs. R. Railpon, Miss Kate Kelly, Miss C. G. M'Manus, Miss Annie Theil, Miss A. L. Pascoe, Miss C. W. Bentley, Miss Florence Gordon, Miss Mary A. Tallieu, Mrs. G. A. Anderson, Miss Isabel Ryan, Mrs. F. V. Hooper, Miss Nanon J. Kelly, Miss Mathilda Reuter, Miss N. B. Hawthorne, Mrs. J. R. Dicks, Miss Lizzie Kelly, Miss Emily Olschner, Miss May A. Leddy, Miss R. T. Murphy, Miss Emma Quick, Anita Ball, G. Black, Mathilda Bernard, M. Bull, J. Brown, O. Brennan, A. Cornwell, R. Carolan, R. C. Chamberlain, M. M. Campanel, E. M. Clark, B. Carroll, A. J. Dougherty, N. Donovan, Alica Dickson, Mary Daly, Selina Duvic, Emily Dart, M. De Boer, D. Daignan, H. Diamond, E. B. Eagleson, Alica Ellis, Georgie Fountain, A. A. Finch, M. Flanagan, J.

Gallagher, Kate Hughes, L. Hentich, Kate Howley, B. Hynes, M. Halloren, Irene Hester, Louise Hornbeck, Ida Halberg, E. Hamilton, A. Harper, C. M. Holland, M. Houlgrave, M.
255 Harrison, M. G. Holmes, B. Harthorne, Daisy Jackson, N. James, I. E. Joyce, L. Kilshaw, A. C. Kearney, Mary Kennedy, A. E. Kennedy, M. D. Kennedy, J. Lahargue, M. A. Michel, L. Mulvey, A. Michel, B. Mayhen, B. Maher, M. D. Moore, M. Michel, Lizzie Neelis, N. E. Nicholls, M. Orrantia, Agatha Pretus, F. Powers, R. M. Pascoe, L. A. Patton, G. Peyton, A. Payne, M. Ryan, S. J. Stephens, S. A. Steele, M. Smith, L. Smith, C. M. Spelliey, J. Simon, M. Spelliey, S. Smith, N. Shelly, A. Stickney, C. Stringer, D. Sheehan, Kate Sullivan, Martha Spence, Rosalie Shoeffer, E. J. Taylor, Alice Young, B. Allen, C. Amman, E. Bernard, E. O. Boyle, M. Barrow, B. Booth, Sarah Brooks, B. Blanc, J. Burke, C. Byrne, D. Burt, D. Cosgrove, N. Collins, E. Cure, E. Cronan, M. Caldwell, L. Chevalleau, E. Chineau, N. Caruthers, M. T. Cochran, M. Carroll, M. Connelly, M. Collier, M. Duighnan, H. Daly, M. Donelly, C. Denny, B. Doyle, E. Ducts, J. Foster, A. Gould, R. Hevyart, M. Housman, B. Heavy, J. Jacquet, C. Killelee, J. Kinney, G. H. Kelly, M. Kelly, Mary Kelly M. Lane, M. Lardner, C. Moffat, E. M'Cabe, M. M'Cormack, E. Maginnis, B. M'Keone, E. Nides, M. Martin, H. O'Connor, M. A. Pickett, E. Rhobacher, M. Riley, N. J. Rayna, John Ryan, M. Ryan, M. Schreiver, M. J. Stansbury, M. Shea, M. White, J. C. Watkins, A. Wilcox, and A. Waters, citing and admonishing them to be and appear at a session of the Supreme Court of the United States, to be held at the city of Washington, District of Columbia, on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Board of Liquidation of the City Debt, defendant in said supreme court of the State of Louisiana and plaintiff in error in this court, shall prosecute the said writ of error to effect and answer all damage and costs if it fails to make the said plea good, then the above obligation to be void; else to remain in full force and virtue.

THE BOARD OF LIQUIDATION
OF THE CITY DEBT,
(Signed) By R. M. WALMSLEY, *Pres.*
[SEAL.] AMERICAN SURETY COMPANY
OF NEW YORK,
256 By DAVID B. SICKELS, *Vice President.*
SAMUEL S. PERRY, *Attorney.*

Sealed and delivered in the presence of—

——— ———.

The name "Robert M. Walmsley" (as surety) erased and the name "American Surety Company of New York" interlined in lieu thereof; also the words "twenty-five hundred dollars ($2,500.00)" erased and words "one hundred and twenty thousand dollars

($120,000.00)" interlined in lieu thereof; also all ink corrections and interlineations of names, all approved before signing.

(Signed) DAVID B. SICKELS.

(Signed) HOWARD ALLISON,
As to Surety Co.

61883. K. J. P.

$3 Stamp. $3 Documentary.	$1 Stamp. $1 Documentary.	50 Stamp. 50 Documentary.

The foregoing bond is approved, to operate as a supersedeas.

(Signed) E. D. WHITE,
Associate Justice, Supreme Court of the United States.

STATE AND COUNTY OF NEW YORK, *ss:*

On this 11th day of July, 1899, before me personally appeared David B. Sickels, vice-president of the American Surety Company of New York, to me known, who, being by me duly sworn, did depose and say that he resided in the city of New York; that
257 he is the vice-president of the American Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order, and that the liabilities of said corporation do not exceed its assets, as ascertained in the manner provided by law; and the said David B. Sickels further said that he was appointed with Samuel S. Perry, and knew him to — one of the attorneys of said corporation; that the signature of said Samuel S. Perry subscribed to the said instrument is in the genuine handwriting of the said Samuel S. Perry and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said David B. Sickels, vice-president.

(Signed) K. J. PEIRCY,
[SEAL.] *Notary Public, Kings Co.*

Certificate filed in New York, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, Rockland, and Nassau Cos.

At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"Resolved, That the president and vice-presidents be, and they hereby are, and each one of them is, authorized and empowered to execute and deliver and attach the seal of the company to any and all bonds and undertakings for or on behalf of the company in its business of guaranteeing the performance of contracts other than insurance policies and executing or guaranteeing bonds and under-

takings required or permitted in all actions or proceedings by law allowed, such guarantee bonds and undertakings, however,
258 to be attested in every instance by the secretary, one of the assistant secretaries, or one of the attorneys."

COUNTY OF NEW YORK, *ss:*

I, Samuel S. Perry, attorney of the American Surety Company of New York, have compared the foregoing resolution with original thereof, as recorded in the minute book of said company, and do certify that the same is a true and correct transcript therefrom and of the whole of said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 11th day of July, 1899.

[SEAL.] (Signed) SAMUEL S. PERRY, *Attorney.*

STATE OF NEW YORK, *County of New York,* } *ss:*

David B. Sickels, being duly sworn, says that he is vice-president of the American Surety Company of New York; that said company is a corporation duly created, existing, and engaged in business as a surety company under and by virtue of the laws of the State of New York, and has duly complied with all the requirements of the laws of said State applicable to said company, and is duly qualified to act as surety under such laws; that said company has also duly complied with and is duly qualified to act as surety under the act of Congress of August 13, 1894, entitled "An act relative to recognizances, stipulations, bonds, and undertakings, and to allow certain corporations to be accepted as surety thereon;" that the within is a true copy of the last statement of the assets and liabilities of said company, as rendered pursuant to section 4 of said act of Congress; that said American Surety Company is worth $240,000 over
259 and above all its debts and liabilities and such exemptions as may be allowed by law.

(Signed) DAVID B. SICKELS.

Subscribed and sworn before me this 11th day of July, 1899.

(Signed) K. J. PEIRCEY.
[SEAL.] *Notary Public, Kings Co.*

Certificate filed in New York, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, Rockland, and Nassau Cos.

Endorsed: Form G, 362, 2100. 4, '99.

American Surety Company of New York,

Incorporated April 14, 1884.

General offices, 100 Broadway.

Financial Statement March 31, 1899.

Resources:		
Real estate and improvements	$3,213,930.66	
Stocks and bonds	953,626.60	
Bills receivable	158,280.12	
Cash in banks and offices	697,061.31	
Premiums in course of collection	182,270.38	
Accrued interest and rents	32,809 37	
		$5,237,978.44
Liabilities:		
Bills and accounts payable	$25,093.67	
Claims in process of adjustment	174,259.39	
Premium reserve requirement	632,429.53	
Undivided profits	906,195.85	
Surplus	1,000,000.00	
Capital stock	2,500,000.00	
		$5,237,978.44

260 (Endorsed:) No. 13034. Supreme court of Louisiana. State *ex rel.* Miss L. B. Wilder *et als. vs.* Board of Liquidation City Debt *et als.* Bond for writ of error. Filed July 17, 1899. (Signed) T. McC. Hyman, clerk.

261 *Assignment of Errors, Board of Liquidation.*

Supreme Court of the State of Louisiana.

STATE *ex Rel.* MISS L. B. WILDER ET AL.
vs.
BOARD OF LIQUIDATION OF THE CITY DEBT; *FRAINAGE* Commission of New Orleans, Intervenor. } No. 13034.

The defendant in this cause, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers are contained in the decision, judgment, or decree of the supreme court of the State of Louisiana:

First. That by section 1 of the amendment to the constitution of the State of Louisiana proposed by act 110 of the General Assembly of said State, which proposal was approved July 6th, 1890, which said amendment was adopted by a majority vote of the qualified electors of said State at the general election held therein, held in April, 1892, it is provided that the four per cent. constitutional bonds of the city of New Orleans thereby authorized shall be for the purpose of retiring the then valid outstanding bonds of the city of New Orleans and to retire judgments then or thereafter rendered against the said city on floating-debt claims prior to 1879 entitled to be

funded under act No. 67 of the General Assembly of the State of Louisiana of 1884; that by section 3 of act No. 36 of the General Assembly of 1890, otherwise known as act No. 110 of that year, it was provided that all funds received by The Board of Liquidation of the City Debt, defendant herein, shall be deposited with the fiscal agent of the city of New Orleans, or, if the same be deemed not satisfactory by the said board, with a chartered depositary selected by the same to the credit of a special fund called the "bond-sales fund," which fund by said section, it is declared, shall be used solely and exclusively for the purpose of retiring by payment all of the then outstanding valid bonds of the city of New Orleans, matured or subject to call, and the payments of judgments then or thereafter rendered on floating-debt claims prior to 1879, entitled to be funded under act No. 67 of 1884.

That the purposes for which said bonds were authorized by said amendment are exclusive of all others, and there is no authority in law for their issuance for any other purpose or purposes than those named in the said amendment; that by the terms of section 3 of said act 36 (or 110) of 1890 the proceeds of the sale of any of said four per cent. constitutional bonds are set apart and dedicated solely and exclusively to the purposes therein named.

262 That article 317 of the constitution of the State of Louisiana adopted in 1898, which directs the board of liquidation to sell a sufficient number of said constitutional bonds to pay certain obligations of the board of school directors of the public schools of the parish of Orleans for unpaid salaries of school teachers, portresses, and all other legitimate claims against said school board for the years 1882, 1883, 1884, 1885, 1886, and 1887, under the conditions named in article 315 of the said constitution of the State of Louisiana, so far as the same might be assumed by the city of New Orleans, after its examination of said claims as directed by said article, directs the issuance and sale of said constitutional bonds for purposes not designated by said constitutional amendment and by said act No. 36 (or 110) of 1890, by reason of which it is an impairment of the contracts and the rights therefrom arising, created by the said constitutional amendment and the said act.

That the contracts so violated are those in favor of the holders of all outstanding premium bonds issued by the city of New Orleans; all constitutional bonds issued or to be lawfully issued under the authority of said amendment and the said act; those of all contractors who, up to the time the said constitution of 1898 went into effect, to wit, May 1st, 1898, had constructed works of permanent public improvement under contracts with the city of New Orleans, payable out of the surplus of the one per cent. tax authorized by the said amendment and the said act, which said surplus was established and is fully described in sections 8 and 10 of said act; all contracts made by the drainage commission for drainage works, and all bonds issued by it under the acts of the General Assembly of the State of Louisiana No. 114 of 1896 and No. 63 of 1898, which by the last-mentioned acts are payable out of the permanent public

improvement fund, composed of one-half of the said surplus
263 of the said one per cent. tax established and described by sections 8 and 10 of the said act No. 36 (or 110) of 1890, which said fund, by said acts No. 114 of 1896 and No. 63 of 1898, is specially set apart and dedicated for the payment and discharge of all said contracts made and of all said bonds issued by the said drainage commission.

That said acts further provide that all their provisions respecting the dedication and application of funds or moneys shall constitute a contract with the holder or holders of said bonds and with each and every person or corporation which may have entered into contracts with the said drainage commission, and expressly forbid any impairment of the same.

That the judgment or decree of the supreme court of the State of Louisiana which directs the execution by this defendant of said article 317 of the constitution of the State of Louisiana of 1898, by the sale of a sufficient number of said four per cent. constitutional bonds to pay and retire the obligations of the board of school directors for the parish of Orleans, which have been approved and assumed by the city of New Orleans under article 315 of said constitution, impairs the obligations of the contracts created by said acts No. 36 (or 110) of 1890, No. 114 of 1896, and No. 63 of 1898, and that the said article No. 317 of the said constitution, of itself and as interpreted by the supreme court of the State of Louisiana in this cause and as the said court by its final judgment or decree herein has directed its enforcement and *enforcement*, is an impairment of the obligations of said contracts and deprives all persons holding rights under the same of their property without due process of law, all in violation of section 10 of article 1 and the fourteenth amendment of the Constitution of the United States.

Second. That by the terms of the said constitutional amendment and the said act No. 36 (or 110) of 1890 the payment
264 of the yearly allotments and premiums of the premium bonds of the city of New Orleans and all charges and expenses for the carrying of the premium-bond plan of the city of New Orleans are to be paid out of the one per cent. tax authorized by the said constitutional amendment and levied by the said act; that no person has any right to participate in nor can any bond or contract be made payable out of the said one per cent. tax or any part thereof, save those expressly mentioned and so permitted by the said constitutional amendment and the said act, and it is the contract right of any person so entitled to receive any portion of said one per cent. tax to exclude from participation therein any person or contract not so permitted or entitled under the terms of said constitutional amendment and said act; that article 317 of the constitution of the State of Louisiana adopted in 1898, and the effect given same by the final judgment and decree of the supreme court of the State of Louisiana in this cause, necessarily impairs the obligation of the contract with all holders of premium bonds created and evidenced by said constitutional amendment and said act by fixing as a charge upon the said one per cent. tax the principal of

and interest upon the four per cent. constitutional bonds which this defendant is directed to issue and sell by said article 317, and also necessarily deprives all holders of said premium bonds of their property without due process of law, all in violation of section 10 of article 1 and the fourteenth amendment to the Constitution of the United States.

Third. That by the terms of the said constitutional amendment and the said act No. 36 (or 110) of the General Assembly of the State of Louisiana of 1890 there is no warrant or authority of law to issue and sell four per cent. constitutional bonds of the city of New Orleans for any purposes other than those set out and enumerated in the same, to wit, to pay and retire all the then outstanding
265 valid bonds of the city of New Orleans matured, maturing, or subject to call; to pay judgments rendered against the city of New Orleans for floating debt claims arising prior to 1879 entitled to be funded under act No. 67 of 1884; that it is the contract right of all holders of said constitutional bonds under said constitutional amendment and said act No. 36 (or 110) of 1890 to prevent the issuance and sale of said constitutional bonds for any purposes not mentioned in said constitutional amendment, and likewise to prevent any act or proceeding by which the burdens on said one per cent. tax are to be increased or charges created against the same not mentioned or authorized by said constitutional amendment and said act.

That said article 317 of the constitution of the State of Louisiana of 1898, and effect given by the final judgment or decree of the supreme court of the State of Louisiana in this case, is to impair the contracts in favor of all holders of said constitutional bonds, created and evidenced by the said constitutional amendment and the said act.

Fourth. That all persons who made contracts with the city of New Orleans and executed the same for the construction of works of permanent public improvement, the prices of which are payable out of the surplus of the one per cent. tax authorized by the said constitutional amendment and levied by said act No. 36 (or 110) of 1890, one-half of which surplus, by sections 8 and 10 of said act, being specially dedicated to the payment and discharge of said contracts, are entitled to exclude from participation in any portion of said one per cent. tax any and all persons not entitled to participate therein by the said constitutional amendment and the said act, since any addition to the burden of said tax imposed by said amendment and said act will correspondingly diminish the surplus remaining after payment of the annual charges fixed thereon
266 by said amendment and the said act, and thus impair the obligations of the said contracts: that said article 317 of the constitution of the State of Louisiana of 1898, and the effect given to it by the final judgment or decree of the supreme court of the State of Louisiana in this case, is to impair the contracts in favor of all holders and owners of said contracts.

Fifth. That the obligations of all contracts made by the drainage commission and all bonds issued by it and sold under the afore-

said acts of 1896 and 1898, which are payable out of the permanent public improvement fund, composed of one-half of the surplus described in paragraph 2 in this assignment, are in like manner impaired by said article 317 of the State constitution of 1898 and the effect given to it by the final judgment or decree in this case, the impairment of such obligations being the same in all particulars as that set up in paragraph 4 of this assignment, as concerns all contracts for permanent public improvements made with the city of New Orleans and payable out of the surplus of the said one per cent. tax established and described in sections 8 and 10 of said act No. 36 (or 110) of 1890, the addition of the charge for principal and interest on the constitutional bonds which are directed to be sold by said article 317 of the constitution of the State of Louisiana of 1898 effecting a diminution of the said surplus out of which it is the sole and exclusive right of contractors with the said drainage commission and the holders of its bonds to be paid.

That said article 317 of said constitution and the effect given to it by the final judgment or decree of the supreme court of the State of Louisiana in this case is an impairment of the obligations of the contracts of said contractors and the holders of said bonds of the said drainage commission.

That said article 317 of the constitution of the State of
267 Louisiana of 1898 and the effect given to it by the final judgment or decree of the supreme court of the State of Louisiana in this cause impairs the obligation of all of the bonds and contracts heretofore set out, mentioned, and described, and deprives the holders and owners thereof of their property without due process of law, in violation of section 10, article 1, and the fourteenth amendment of the Constitution of the United States.

The supreme court of the State of Louisiana erred in giving such effect or any effect at all to said article 317; and it further erred in not rejecting the demand of the relators and dismissing their suit on these grounds; that the errors in the said final judgment and decree and the proceedings anterior thereto are those specially set out and enumerated above, and they entitled defendant to a reversal of said final judgment or decree of the supreme court of the State of Louisiana and the rejection by this court of relators' demand.

Wherefore this defendant and plaintiff in error prays that the judgment of the said supreme court of the State of Louisiana be reversed, and such directions be given that full force and efficacy may inure to defendant by reason of the defenses set up in its answer filed in the said cause.

(Signed) BRANCH K. MILLER,
Attorney for the Board of Liquidation of the City Debt.

(Endorsed:) No. 13034. Supreme court of Louisiana. Board of Liquidation of City Debt *et al.*, plaintiffs in error, *vs.* State *ex rel.* Miss L. B. Wilder *et als.*, defendants in error. Assignment of errors by Board of Liquidation of City Debt. Filed July 15th, 1899. (Signed) T. Mc-. Hyman, clerk.

268 UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana, do hereby certify that the foregoing two hundred and sixty-seven pages contain a full, true, and complete copy of the transcript of the proceedings had in the civil district court for the parish of Orleans in a certain suit wherein The State of Louisiana *ex rel.* Miss L. B. Wilder *et als.* was plaintiff, and The Board of Liquidation of the City Debt was defendant, and The Drainage Commission of New Orleans was intervenor, and also of all the proceedings had in this supreme court on the appeal taken by the said defendant and the said intervenor, which appeal *is* now on the files thereof under No. 13034.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this second day of August, anno Domini one thousand eight hundred and ninety-eight, and in the one hundred and twenty-fourth year of the Independence of the United States of America.

Seal Supreme Court of the State of Louisiana.

T. McC. HYMAN, *Clerk.*

269 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of Louisiana, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between State *ex rel.* Miss *Miss* Lucretia B. Wilder, Mrs. Anna B. Cook, J. E. Seaman, J. V. Calhoun, J. H. Buckley, T. W. Dyer, Mrs. Mary Stamps, Miss H. A. Suter, Miss H. W. Seymour (now Mrs. Gresham), Miss Susan B. Elder, Miss Armentine Vienne, Miss M. Cusach, Miss B. Woods, Mr. A. S. Leche, Miss J. E. Linsler, Miss M. E. Pursell, Miss I. D. Pickens, Miss Kate Slack, Miss M. A. Curran, Mr. W. S. M'Elroy, Miss Carrie Forrer, Mrs. A. L. Howard, Miss M. G. Oliver, Miss Fannie A. Stringer, Miss Ida Whitaker, Miss Fannie S. Harly, Miss Louise Bertel, Mr. Vincent Mielly, Miss M. A. Nugent, Miss K. E. Eastman, Miss S. Bloomfield, Miss O. Woodworth, Mrs. Esther Dobie, Mrs. E. C. Hunter, Miss E. C. Dowty, Mr. D. A. Blanchard, Mrs. C. A. Curtis, Miss M. E. M'Loughlin, Miss H. L. Mylotte, Miss M. A. Broderick, Miss M. G. Fischer, Miss B. Furneaux, Miss Ada Jenks, Miss M. H. O'Connor, Miss A. M. Dart, H. B. Folk, Miss Isabella Simmons, Miss Charlotte Stuart, Miss Nellie H. Watson, Miss Sallie Harris, Miss G. I. Lambourne, Miss Jennie Reese, Miss M. L. Martin, Miss J. C. Dodge, Miss Isabel Levy, Mrs. M. E. M'Donald, Mrs. J. C. Robinson, Miss Eliza Todd, Mrs. M. E. Taliafero, Miss Ida Patton, Miss M. A Ames, Miss F. L.

Flemich, Miss Clemence Charles, Miss Olivia Pitard, Miss M. A. Larkin, Mrs. R. Sulakoski, Miss M. Nevin, Mr. J. H. Heslin, Mrs. Annie Macken, Miss L. B. Grant, Miss E. L. Venables, Miss K. M. Hamblett, Miss Maria Mulvey, Miss A. J. Hamilton, Miss A. Conwell, Miss Annie Sinclair, Miss A. S. Miller, Miss Julia Donovan, Miss M. H. Hewitt, Miss T. A. Sisa, Miss Emma B. Lloyd, Mrs. C. B. Sproule, Miss A. Paddon, Miss R. W. Woodley, Mrs. K. C. M'Cann, Miss M. M'Cord, Miss Cecilia Coll, Miss Carrie Lebatt, Miss Julia Mulvey, Miss Lizzie Barry, Miss Julia Buckley, Miss B. E. Sullivan, Miss Ida Bennett, Miss Mary Walsh, Miss Anna Stokes, Miss Theresa Hartnett, Miss Laura J. Murphy, Mr. A. P. Williams, Miss R. E. Campanel, Miss Amelia Berhel, Miss B. Plicque, Miss Alice Jones, Mrs. C. H. Thesan, Mrs. Sarah B. Allen, Mrs. S. F. Williams, Mrs. C. M. Keppard, Mrs. E. P. M'Carthy, Miss C. C. Kennedy, Miss L. M. White, Mrs. Rosa T. Edmunds, Miss E. B. Egleston, Miss R. M. Chevaillie, Mrs. K. J. Ricker, Mrs. A. E. Jones, Miss Addie M'Cord, Mrs. O. B. Cassanova, Mrs. H. M. Braguiens, Miss Emma Torrey, Miss Georgie Kerns, Miss L. Neelis, Miss M. J. O'Neil, Miss Julia Conroy, Mrs. J. E. Stehle, Miss M. Sassinot, Mrs. E. M. Keplinger, Miss K. Divine, Miss Adele Coudrain, Miss M. H. Hill, Miss O. K. Chellet, Miss R. King, Mr. Henry Reggio, Miss C. Carolon, Miss S. A. Grant, Miss Josephine Stewart, Mrs. M. L. Hampson, Miss Josephine Hille, Miss H. A. Pittman, Miss Rosa Carolan, Mrs. Palmyre Cartier, Miss Aline Ribet, Miss Alice Sherlock, Miss M. E. Lyons, Miss Gretta Donovan, Miss Annie Kerwin, Miss Mary Pearson, Miss M. A. Armstrong, Miss J. M. Mettaxa, Miss M. V. Serran, Miss A. E. King, Miss Emma Lacroix, Miss Alice Sheean, Miss Frances O'Connor, Mr. Warren Easton, Miss G. M'Cerran, Miss M. J. Paul, Mrs. Mary Moore, Miss S. V. Redwood, Miss A. M. Hero, Miss C. Nicol, Miss E. V. Relf, Miss Louise Faust, Miss Sallie Boyce, Miss F. L. Smith, Miss V. Russell, Miss Ellen Moran, Miss C. Lichenstein, Miss A. A. Finch, Miss E. J. Young, Mrs. D. R. Miller, Miss Helen M'Carthy, Miss Mary M'Cann, Miss M. A. Ferguson, Miss Marie L. Points, Miss Lizzie Donovan, Miss Julia Hedges, Mrs. M. F. Gerrard, Miss K. Howley, Dr. Jas. Burns, Miss Antonis Hart, Miss Ella M. Brown, Miss Jane M'Anulty, Miss Marie Peres, Miss Honora Brown, Miss A. F. Duval, Miss Mary L. Barrett, Mr. W. J. Gahan, Mrs. V. Ducatel, Miss Emily Wagner, Miss Kate Toole, Miss Leonie Chevallo, Miss Ellen Carey, Miss Emma Ducoing, Miss A. M. Woods, Mr. Gustave Audry, Mrs. M. A. Doriocourt, Miss Ellen Quayle, Miss Rebecca Smith, Miss M. Bayhi, Miss Laura C. Harris, Mr. C. A. Barnes, Mrs. A. E. Van Camp, Mrs. Paul Ducatel, Miss Louise Van Dycke, Miss Eugenie Desdunes, Miss C. Hubbard, Mrs. Ann Bell, Miss M. O. Carter, Miss Rosa T. Moore, Miss Julia White, Miss Edith Harrison, Miss Susan Smith, Miss F. F. Huberwald, Mrs. H. Chaery, Miss Louise Lynch, Miss Lizzie Kennedy, Miss Mary Murphy, Mrs. Sylvia Easton, Mr. E. H. Trepagnier, Mrs. M. F. Stephens, Miss H. M'Carthy, Miss M. Marshall, Miss M. A. Stewart, Miss Lorenza Bertus, Miss Mary Gordon, Miss M. E. Anderson, Miss K. Delesdernier, Miss Alice Clark, Miss Ellen Kennedy, Miss Rita C. Mon-

rose, Miss Kate Quaid, Miss E. B. Thomas, Mr. Ulric Bettison, Miss I. Warner, Mr. T. J. O'Sullivan, Miss Ellen Gow, Miss M. S. Wilson, Mrs. A. L. Savio, Miss M. E. Cuggy, Miss Lucy Tallon, Miss Delphine Points, Miss Annie Scott, Miss K. J. Hughes, Miss Annie Sheean, Miss Emma Prados, Miss Sophie Blanco, Miss Julia Chevillon, Miss Mary B. Clark, Mrs. Parmela Cuculla, Miss Rosa Dione, Miss Esther Brando, Mr. A. B. Chandler, Miss Bridget Nolan, Miss J. A. Mayberry, Miss C. L. Stewart, Miss K. L. Magnon, Miss Kate E. Murphy, Miss Rebecca Fortune, Miss Marcella Curley, Miss M. O. Reynolds, Miss Mary M'Elligott, Miss A. E. O'Brien, Miss Mary Moore, Miss N. D. Cooper, Miss Jane Donnelly, Miss J. Fitzgerald, Miss Mary L. Stokes, Mrs. H. Kilshaw, Miss J. F. Cripps, Miss M. A. Murphy, Miss E. J. O'Hara, Miss S. Llambias, Mrs. C. Collerton, Miss M. A. Riley, Miss H. L. Garrett, Mrs. A. W. Brown, Miss J. J. Ingraham, Miss M. E. Golden, Miss Amelia Kelsey, Mrs. L. Ward, Mr. M. M. Lowe, Miss M. E. Tank, Miss Ellen Clapp, Miss Maud O'Brien, Miss L. E. Lambourne, Mrs. H. M. Wells, —— Duval, Miss K. L. Glenn, Miss N. S. O'Connor, Miss Helena Phillips, Mrs. H. E. Mallam, Miss M. Creswell, Miss Bettie Murphy, Miss M. Emanuel, Miss M. A. Mulligan, Miss Agnes Boyce, Mrs. W. J. Kleinpeter or Kelinpeter, Miss Agatha Meehan, Miss Emma J. Taylor, Miss L. C. King, Mr. Louis Leche, Miss N. P. Hero, Miss Nettie Parr, Miss I. Fredericks, Miss B. A. Houghton, Miss Mary J. Dowty, Miss Margaret Horan, Miss May Lemkin, Mrs. B. L. Beck, Miss Jessie Wilbur, Miss M. A. Wickes, Miss M. Bridgins, Miss I. E. O'Brien, Miss Eliza Wheaton, Miss H. M. Jourdan, Miss Ruth H. Walsh, Miss K. C. Connolly, Miss Georgia Hodgins, Miss E. Wilbur, Miss S. S. M'Enery, Miss P. E. Packard, — L. E. Stirling, Miss M. E. Sommerville, Mrs. L. M. Williams, Miss Blanche Cenas, Mrs. Josephine Reed, Mrs. C. D. Cooke, Mrs. Cora P. Beecher, Miss Etna Porter, Miss Sidonia Holmes, Mr. J. R. Hutchinson, Miss M. E. Finnerty, Miss E. B. Brown, Miss Irene Rondeau, Miss Minnie Weaver, Miss C. A. Forbes, Miss M. A. Reynolds, Miss Nellie Pickett, Miss M. A. Flanagan, Mrs. C. Reese, Miss L. C. Whitaker, Miss M. J. Dornon, Miss M. J. Kearney, Miss A. L. Beecher, Mrs. W. M. Carroll, Miss M. G. M'Lerenan, Miss D. L. Bostick, Miss Elese Hunter, Miss E. Allen, Miss A. E. M'Lirenan, Mrs. Ellen Hamilton, Miss C. A. Warner, Miss J. E. Morton, Mrs. M. E. Westerfield, Mrs. M. A. Martinez, Miss Mary Clarkson, Miss Ida Halberg, Miss L. Verlander, Mr. C. P. Guichard, Mrs. P. H. Saffold, Miss E. E. Vigers, Miss Amelia Chiapella, Miss Mary E. Penn, Miss Jennie G. Simms, Miss J. C. Berhel, Mr. J. J. O'Connor, Miss L. S. Howard, Mrs. M. E. Fortier, Miss Mathilde Ohlsen, Miss Ada V. Rousseau, Mr. S. C. Clark, Mrs. L. B. Anderson, Mrs. A. E. Chase, Miss M. A. Gardiner, Miss Maggie Redlich, Miss N. E. Nicholls, Miss E. C. Wheelahan, Mrs. M. E. Holmes, Miss E. F. Hayden, Mrs. M. J. Williams, Miss J. E. Mooney, Miss M. J. Turner, Miss Maggie Crawford, Miss H. E. Lawrence, Miss A. E. Kilgrove, Miss F. S. Dalacy, Miss E. L. Rodriguez, Miss Annie Leddy, Miss M. A. Sullivan, Miss Sallie Payne, Miss Lizzie Keeling, Miss Susan Schriever, Miss Julia Clapp, Mr. T. L. Preston, Miss H. O. White, Miss L. E. Prest, Miss Fannie L.

Dart, Miss E. Gardenghi, Miss Anna Dyer, Miss Emma T. Rosner, Miss Isabelle Ferguson, Miss May Brooks, Miss Sarah H. Evans, Miss May E. Blood, Miss May Clack, Miss M. H. Hallaran, Miss Eliza Clark, Miss C. A. Beck, Mrs. R. Railpon, Miss Kate Kelly, Miss C. G. M'Manus, Miss Annie Theil, Miss A. L. Pascoe, Miss C. W. Bentley, Miss Florence Gordon, Miss Mary Tallieu, Mrs. G. A. Anderson, Miss Isabel Ryan, Mrs. F. V. Hooper, Miss Nanon J. Kelley, Miss Mathilde Reuter, Miss N. B. Hawthorne, Mrs. J. R. Dicks, Miss Lizzie Kelly, Miss Emily Olschner, Miss May A. Leddy, Miss R. T. Murphy, Miss Emma Quick, Anita Ball, G. Black, Mathilda Bernard, M. Bull, J. Brown, O. Brennan, A. Cornwell, R. Carolan, R. C. Chamberlain, M. M. Campanel, E. M. Clark, B. Carroll, A. J. Dougherty, N. Donovan, Alica Dickson, Mary Daly, Selina Duvic, Emily Dart, M. De Boer, D. Daignan, H. Diamond, E. B. Eaglesson, Alica Ellis, Georgie Fountain, A. A. Finch, M. Flanagan, J. Gallagher, Kate Hughes, L. Hentich, Kate Howley, B. Hynes, M. Halleran, Irene Hester, Louise Hornbeck, Ida Halberg, E. Hamilton, A. Harper, C. M. Holland, N. Houlgrave, M. Harrison, M. G. Holmes, B. Harthorne, Daisy Jackson, M. James, I. E. Joyce, L. Kilshaw, A. C. Kearney, Mary Kennedy, A. Kennedy, M. D. Kennedy, J. Lahargue, M. A. Michel, L. Mulvey, A. Michel, V. Mayhen, B. Maher, M. D. Moore, M. Michel, Lizzie Neelis, N. E. Nicholls, M. Orrantia, Agatha Pretus, F. Powers, R. M. Pascoe, L. A. Patton, G. Peyton, A. Payne, M. Ryan, S. J. Stephens, S. A. Steele, M. Smith, L. Smith, C. M. Spellicy, J. Simon, M. Spellicy, S. Smith, N. Shelly, A. Stickney, C. Stringer, D. Sheehan, Kate Sullivan, Martha Spence, Rosalie Shoeffer, E. J. Taylor, Alice Young, B. Allen, C. Amman, E. Bernard, E. O. Boyle, M. Barrow, B. Booth, Sarah Brooks, B. Blanc, J. Burke, C. Byrne, D. Burt, D. Cosgrove, M. Collins, E. Cure, E. Cronan, M. Caldwell, L. Chevolleau, E. Chineau, M. Carithers, M. T. Cochran, M. Carroll, M. Connelly, M. Collier, M. Duignan, H. Daly, M. Donnelly, C. Denny, B. Doyle, E. Ducts, J. Foster, A. Gould, R. Hevvart, M. Hausman, B. Heavy, J. Jacquet, C. Killelae, J. Kinney, G. H. Kelly, M. Kelly, Mary Kelly, M. Lane, M. Lardner, C. Moffat, E. M'Cabe, M. M'Cormack, E. M'Ginnis, B. M'Keone, E. Nides, M. Morton, H. O'Connor, M. A. Pickett, E. Rhobacher, M. Riley, N. J. Rayna, John Ryan, M. Ryan, M. Schreiver, M. J. Stansbury, M. Shea, M. White, J. C. Watkins, A. Wilcox, & A. Waters are plaintiffs & relators, & The Board of Liquidation of City Debt is defendant, & The Drainage Commission of New Orleans is intervenor, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the con-
270 struction of the clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially

set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Drainage Commission of New Orleans, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 10th day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

{ Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La. }

E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
——— ———.

271 [Endorsed:] No. 13034. Supreme court of Louisiana. Board of Liquidation of City Debt *et al.*, plaintiffs in error, *versus* State *ex rel.* Miss L. B. Wilder *et als.*, defendants in error. Writ of error. Filed July 19, 1899. T. McC. Hyman, clerk.

272 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Miss Lucretia B. Wilder, Mrs. Anna B. Cook, J. E. Seaman, J. V. Calhoun, J. H. Buckley, T. W. Dyer, Mrs. Mary Stamps, Miss H. A. Suter, Miss H. W. Seymour (now Mrs. Gresham), Miss Susan B. Elder, Miss Armentine Vienne, Miss M. Cusach, Miss B. Woods, Mr. A. S. Leche, Miss J. E. Linsler, Miss M. E Pursell, Miss I. D. Pickens, Miss Kate Slack, Miss M. A. Curran, Mr. W. S. M'Elroy, Miss Carrie Forrer, Mrs. A. L. Howard, Miss M. G. Oliver, Miss Fannie A. Stringer, Miss Ida Whitaker, Miss Fannie S. Harly, Miss Louise Bertel, Mr. Vincent Mielly, Miss M. A. Nugent, Miss K. E. Eastman, Miss S. Bloomfield, Miss O. Woodworth, Mrs. Esther Dobie, Mrs. E. C. Hunter, Miss E. C. Dowty, Mr. D. A. Blanchard, Mrs. C. A. Curtis, Miss M. E. M'Loughlin, Miss H. L. Mylotte, Miss M. A. Broderick, Miss M. G. Fischer, Miss B. Furneaux, Miss Ada Jenks, Miss M. H. O'Connor, Miss A. M. Dart, H. B. Folk, Miss Isabella Simmons, Miss Charlotte Stewart, Miss Nellie H. Watson, Miss Sallie Harris,

Miss G. I. Lambourne, Miss Jennie Reese, Miss M. L. Martin, Miss J. C. Dodge, Miss Isabel Levy, Mrs. M. E. M'Donald, Mrs. J. C. Robinson, Miss Eliza Todd, Mrs. M. E. Taliafero, Miss Ida Patton, Miss M. A. Ames, Miss F. L. Flemich, Miss Clemence Charles, Miss Olivia Pitard, Miss M. A. Larkin, Mrs. R. Sulakoski, Miss M. Nevin, Mr. J. H. Heslin, Mrs. Annie Macken, Miss I. B. Grant, Miss E. L. Venables, Miss K. M. Hamblett, Miss Maria Mulvey, Miss A. J. Hamilton, Miss A. Conwell, Miss Annie Sinclair, Miss A. S. Miller, Miss Julia Donovan, Miss H. M. Hewitt, Miss T. A.
273 Sisa, Miss Emma B. Lloyd, Mrs. C. V. Sproule, Miss A. Paddon, Miss R. M. Woodley, Mrs. K. C. M'Cann, Miss M. M'Cord, Miss Cecilia Coll, Miss Carrie Labatt, Miss Julia Mulvey, Miss Lizzie Barry, Miss Julia Buckley, Miss B. E. Sullivan, Miss Ida Bennett, Miss Mary Walsh, Miss Anna Stokes, Miss Theresa Hartnett, Miss Laura J. Murphy, Mr. A. P. Williams, Miss R. E. Campanel, Miss Amelia Berhel, Miss B. Plicque, Miss Alice Jones, Mrs. C. H. Thezan, Mrs. Sarah B. Allen, Mrs. S. F. Williams, Mrs. C. M. Keppard, Mrs. E. P. M'Carthy, Miss C. C. Kennedy, Miss L. M. White, Mrs. Rosa T. Edmunds, Miss E. B. Egleston, Miss R. M. Chevaillie, Mrs. K. J. Ricker, Mrs. A. E. Jones, Miss Addie M'Cord, Mrs. O. B. Cassanova, Mrs. H. M. Braguiens, Miss Emma Torrey, Miss Georgie Kerns, Miss L. Neelis, Miss M. J. O'Neill, Miss Julia Conroy, Mrs. J. E. Stehle, Miss M. Sassinot, Mrs. E. M. Keplinger, Miss K. Divine, Miss Adele Coudrain, Miss M. H. Hill, Miss O. K. Chellet, Miss R. King, Mr. Henry Reggio, Miss C. E. Carolan, Miss S. A. Grant, Miss Josephine Stewart, Mrs. M. L. Hampson, Miss Josephine Hille, Miss H. A. Pittman, Miss Rosa Carolon, Mrs. Palmyre Cartier, Miss Aline Ribet, Miss Alice Sherlock, Miss M. E. Lyons, Miss Gretta Donovan, Miss Annie Kerwin, Miss Mary Pearson, Miss M. A. Armstrong, Miss J. M. Mettaxa, Miss M. V. Serran, Miss A. E. King, Miss Emma Lacroix, Miss Alice Sheenan, Miss Frances O'Connor, Mr. Warren Easton, Miss G. M'Cerran, Miss M. J. Paul, Mrs. Mary Moore, Miss S. V. Redwood, Miss A. M. Hero, Miss C. Nicol, Miss E. V. Relf, Miss Louise Faust, Miss Sallie Boyce, Miss F. L. Smith, Miss V. Russell, Miss Ellen Moran, Miss C. Lichtenstein, Miss A. A. Finch, Miss E. J. Young, Mrs. D. R. Miller, Miss Helen M'Carthy, Miss Mary M'Cann, Miss M. A. Ferguson, Miss Marie L. Points, Miss Lizzie Donovan, Miss Julia Hedges, Mrs. M. F. Gerrard, Miss K. Howley, Dr. Jas. Burns, Miss Antonis Hart, Miss Ella M. Brown, Miss Jane M'Anulty, Miss Marie Peres, Miss Honora Brown, Miss A.
274 F. Duval, Miss Mary L. Barrett, Mr. W. J. Gahan, Mrs. V. Ducatel, Miss Emily Wagner, Miss Kate Toole, Miss Leonie Chevallo, Miss Ellen Carey, Miss Emma Ducoing, Miss A. M. Woods, Mr. Gustave Andre, Mrs. M. A. Doriocourt, Miss Ellen Quayle, Miss Rebecca Smith, Miss M. Bayhi, Miss Laura C. Harris, Mr. C. A. Barnes, Mrs. A. E. Van Camp, Mrs. Paul Ducatel, Miss Louise Van Dycke, Miss Eugenie Desdunes, Miss C. Hubbard, Mrs. Ann Bell, Miss M. O. Carter, Miss Rosa T. Moore, Miss Julia White, Miss Edith Harrison, Miss Susan Smith, Miss F. F. Huberwald, Mrs. H. Chaery, Miss Louise Lynch, Miss Lizzie Kennedy,

Miss Mary Murphy, Mrs. Sylvia Easton, Mr. E. H. Trepagnier, Mrs. M. F. Stevens, Miss H. M'Carthy, Miss M. Marshall, Miss M. A. Stewart, Miss Lorenzo Bertus, Miss Mary Gordon, Miss M. E. Anderson, Miss K. Delesdernier, Miss Alice Clark, Miss Ellen Kennedy, Miss Rita C. Monrose, Miss Kate Quaid, Miss E. B. Thomas, Mr. Ulric Bettison, Miss I. Warner, Mr. T. J. O'Sullivan, Miss Ellen Gow, Miss M. S. Wilson, Mrs. A. L. Savio, Miss M. E. Cuggy, Miss Lucy Tallon, Miss Delphine Points, Miss Annie Scott, Miss K. J. Hughes, Miss Annie Sheean, Miss Emma Prados, Miss Sophie Blancq, Miss Julia Chevillon, Miss Mary B. Clark, Mrs. Pamela Cucalla, Miss Rose Dione, Miss Esther Brando, Mr. A. B. Chandler, Miss Bridget Nolan, Miss J. A. Mayberry, Miss C. L. Stewart, Miss K. L. Magnon, Miss Kate E. Murphy, Miss Rebecca Fortune, Miss Marcella Curley, Miss M. O. Reynolds, Miss Mary M'Elligott, Miss A. E. O'Brien, Miss Mary Moore, Miss N. D. Cooper, Miss Jane Donnelly, Miss J. Fitzgerald, Miss Mary L. Stokes, Mrs. H. Kilshaw, Miss J. F. Cripps, Miss M. A. Murphy, Miss E. O'Hara, Miss S. Llambias, Mrs. C. Collerton, Miss M. A. Riley, Miss H. L. Garrett, Mrs. A. W. Brown, Miss J. J. Ingraham, Miss M. E. Golden, Miss Amelia Kelsey, Mrs. L. Ward, Mr. M. M. Lowe, Miss M. E. Tank, Miss Ellen Clapp, Miss Maud O'Brien, Miss L. E. Lambourne, Mrs. H. M. Wells,
275 Miss K. L. Glenn, Miss N. S. O'Connor, Miss Helena Phillips, Mrs. M. E. Mallam, Miss M. Creswell, Miss Bettie Murphy, Miss M. Emanuel, Miss M. A. Mulligan, Miss Agnes Boyce, Mrs. W. J. Kleinpeter, or Kelinpeter, Miss Agatha Meehan, Miss Emma J. Taylor, Miss L. C. King, Mr. Louis Leche, Miss N. P. Hero, Miss Nettie Parr, Miss I. Fredericks, Miss V. A. Houghton, Miss Mary J. Dowty, Miss Margaret Horan, Miss May Lemkin, Mrs. B. L. Beck, Miss Jessie Wilbur, Miss M. A. Wickes, Miss M. Bridgins, Miss I. E. O'Brien, Miss Eliza Wheaton, Miss H. M. Jourdan, Miss Ruth H. Walsh, Miss K. C. Connelly, Miss Georgia Hodgins, Miss E. Wilbur, Miss S. S. M'Enery, Miss P. E. Packard, L. E. Sterling, Miss M. E. Sommerville, Mrs. L. M. Williams, Miss Blanche Cenas, Mrs. Josephine Reed, Mrs. C. D. Cooke, Mrs. Cora P. Beecher, Miss Etna Porter, Miss Sidonia Holmes, Mr. J. R. Hutchinson, Miss M. E. Finnerty, Miss E. B. Brown, Miss Irene Rondeau, Miss Minnie Weaver, Miss C. A. Forbes, Miss M. A. Reynolds, Miss Nellie Pickett, Miss M. A. Flanagan, Mrs. C. Reese, Miss L. C. Whitaker, Miss M. J. Dornon, Miss M. J. Kearney, Miss A. L. Beecher, Mrs. W. M. Carroll, Miss M. G. M'Lerenan, Miss D. L. Bostick, Miss Elese Hunter, Miss E. Allen, Miss A. E. M'Lirenan, Miss Ellen Hamilton, Miss C. A. Warner, Miss J. E. Morton, Mrs. M. E. Westerfield, Mrs. M. A. Martinez, Miss Mary Clarkson, Miss Ida Halberg, Miss E. Verlander, Mr. C. P. Guichard, Mrs. P. H. Saffold, Miss E. E. Vigers, Miss Amelia Chiapella, Miss Mary E. Penn, Miss Jennie G. Simms, Miss J. C. Berhel, Mr. J. J. O'Connor, Miss L. S. Howard, Mrs. M. E. Fortier, Miss Mathilda Ohlsen, Miss Ada V. Rousseau, Mr. S. C. Clark, Mrs. L. B. Anderson, Mrs. A. E. Chase, Miss M. A. Gardiner, Miss Maggie Redlich, Miss N. E. Nicholls, Miss E. C. Wheelahan, Mrs. M. E. Holmes, Miss

E. F. Hayden, Mrs. M. J. Williams, Miss J. E. Mooney, Miss M. J. Turner, Miss Maggie Crawford, Miss H. E. Lawrence, Miss A. E. Kilgrove, Miss F. S. Dalacy, Miss E. L. Rodriguez, Miss
276 Annie Leddy, Miss M A. Sullivan, Miss Sallie Payne, Miss Lizzie Keeling, Miss Susan Schriever, Miss Julia Clapp, Mr. T. L. Preston, Miss H. O. White, Miss L. E. Pres, Miss Fannie I. Dart, Miss E. Gardenghi, Miss Anna Dyer, Miss Emma T. Rosner, Miss Isable Ferguson, Miss May Brooks, Miss Sarah H. Evans, Miss May E. Blood, Miss May Clack, Miss M. H. Hallaran, Miss Eliza Clark, Miss C. A. Beck, Mrs. R. Railpon, Miss Kate Kelly, Miss C. G. M'Manus, Miss Annie Theil, Miss A. L. Pascoe, Miss C. W. Bentley, Miss Florence Gordon, Miss Mary Tallieu, Mrs. G. A. Anderson, Miss Isabel Ryan, Mrs. F. V. Hooper, Miss Nanon J. Kelley, Miss Mathilde Reuter, Miss N. B. Hawthorne, Mrs. J. R. Dicks, Miss Lizzie Kelly, Miss Emily Olschner, Miss May A. Leddy, Miss R. T. Murphy, Miss Emma Quick, Anita Ball, C. Black, Mathilda Bernard, M. Bull, J. Brown, O. Brennan, A. Cornwell, R. Carolan, R. C. Chamberlain, M. M. Campanel, E. M. Clark, B. Carroll, A. J. Dougherty, N. Donovan, Alica Dickson, Mary Daly, Selina Duvic, Emily Dart, M. De Boer, D. Daignan, H. Diamond, E. B. Eaglesson, Alica Ellis, Georgie Fountain, A. A. Finch, M. Flanagan, J. Gallagher, Kate Hughes, L. Hentich, Kate Howley, B. Hynes, M. Halloran, Irene Hester, Louise Hornbeck, Ida Halberg, E. Hamilton, A. Harper, G. M. Holland, N. Houlgrave, N. Harrison, M. O. Holmes, B. Harthorne, Daisy Jackson, N. James, I. E. Joyce, L. Kilshaw, A. C. Kearney, Mary Kennedy, A. Kennedy, M. D. Kennedy, J. Labargue, M. A. Michel, L. Mulvey, A. Michel, B. Mayhen, B. Maher, M. D. Moore, M. Michel, Lizzie Neelis, N. E. Nicholls, M. Orrantia, Agatha Pretus, F. Powers, R. M. Pascoe, L. A. Patton, G. Peyton, A. Payne, M. Ryan, S. J. Stephens, S. A. Steele, M. Smith, L. Smith, C. M. Spelliey, J. Simon, M. Spellicy, S. Smith, N. Shelly, A. Stickney, C. Stringer, D. Sheehan, Kate Sullivan, Martha Spence, Rosalie Shoeffer, E. J. Taylor, Alice Young, B. Allen, C. Amman, E. Bernard, E. O. Boyle, M. Barrow, B. Booth, Sarah Brooks, B. Blanc, J. Burke, C. Byrne, D.
277 Burt, D. Cosgrove, M. Collins, E. Cure, E. Cronan, M. Caldwell, L. Chevolleau, E. Chineau, M. Carithers, M. T. Cochran, M. Carroll, M. Connelly, M. Collier, M. Duignan, H. Daly, M. Donnelly, C. Denny, B. Doyle, E. Ducts, J. Foster, A. Gould, R. Hevyart, M. Hausman, B. Heavy, J. Jacquet, G. Killelae, J. Kinney, G. H. Kelley, M. Kelly, Mary Kelly, M. Lane, M. Lardner, C. Moffatt, E. M'Cabe, M. M'Cormack, E. M'Ginnis, B. M'Keone, E. Nides, M. Morton, H. O'Connor, M. A. Pickett, E. Rhobacher, M. Riley, N. J. Rayna, John Ryan, M. Ryan, M. Schreiver, M. J. Stansbury, M. Shea, M. White, J. C. Watkins, A. Wilcox, and A. Waters, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of Louisiana,

wherein the said Drainage Commission of New Orleans is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said Drainage Commission of New Orleans, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 10th day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

E. D. WHITE,
Associate Justice, Supreme Court of the United States.

Service of within citation accepted.
N. O., April 19th, 1899.

CHAS. J. THÉARD,
For Himself and for Arthur McGuirk and Henry L. Lazarus, Attorneys for Defendants in Error.

278 [Endorsed:] No. 13034. Supreme court of Louisiana. Board of Liquidation of City Debt *et al.*, plaintiffs in error, *v.* State *ex rel.* Miss L. B. Wilder *et als.*, defendants in error. Citation. Filed July 19, 1899. T. McC. Hyman, clerk.

279 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Louisiana, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of Louisiana upon the relation of Miss Lucretia B. Wilder, Mrs. Anna B. Cook, J. E. Seaman, J. V. Calhoun, J. H. Buckley, T. W. Dwyer, Mrs. Mary Stamps, Miss H. A. Suter, Miss H. W. Seymour (now Mrs. Gresham), Miss Susan B. Elder, Miss Armentine Vienne, Miss M. Cusach, Miss B. Woods, Mr. A. S. Leche, Miss J. E. Linsler, Miss M. E. Pursell, Miss I. D. Pickens, Miss Kate Slack, Miss M. A. Curran, Mr. W. S. M'Elroy, Miss Carrie Forrer, Mrs. A. L. Howard, Miss M. G. Oliver, Miss Fannie A. Stringer, Miss Ida Whitaker, Miss Fannie S. Harby, Miss Louise Berthel, Mr. Vincent Mielly, Miss M. A. Nugent, Miss K. E. Eastman, Miss S. Bloomfield, Miss O. Woodworth, Mrs. Esther Dobie, Mrs. E. C. Hunter, Miss E. C. Dowty, Mr. D. A. Blanchard, Mrs. C. A. Curtis, Miss M. E. M'Loughlin, Miss H. L. Mylotte, Miss M. A. Broderick, Miss M. G. Fischer, Miss B. Furneaux, Miss Ada Jenks, Miss M. H. O'Connor, Miss A. M. Dart, H. B. Folk, Miss Isabella Simmons, Miss Charlotte Stewart, Miss Nellie H. Watson, Miss Sallie Harris, Miss G. I. Lambourne, Miss Jennie Reese, Miss M. L. Martin, Miss J. C. Dodge, Miss Isabelle Levy, Mrs. M. E. McDonald, Mrs. J. C.

Robinson, Miss Eliza Todd, Mrs. M. E. Taliefero, Miss Ida Patton, Miss M. A. Ames, Miss F. L. Flemich, Miss Clemence Charles, Miss Olivia Pitard, Miss M. A. Larkin, Mrs. R. Sulakoski, Miss M. Nevin,
Mr. J. H. Neslin, Mrs. Annie Macken, Miss I. B. Grant, Miss
280 E. L. Venables, Miss K. M. Hamblett, Miss Maria Mulvey,
Miss A. J. Hamilton, Miss A. Conwell, Miss Annie Sinclair, Miss A. S. Miller, Miss Julia Donovan, Miss H. M. Hewitt, Miss T. A. Sisa, Miss Emma B. Lloyd, Mrs. C. B. Sproule, Miss A. Paddon, Miss R. M. Woodley, Miss K. C. McCann, Miss M. M'Cord, Miss Cecilia Coll, Miss Carrie Labatt, Miss Julia Mulvey, Miss Lizzie Barry, Miss Julia Buckley, Miss B. E. Sullivan, Miss Ida Bennett, Miss Mary Walsh, Miss Anna Stokes, Miss Theresa Hartnett, Miss Laura J. Murphy, Mr. A. P. Williams, Miss R. E. Campanel, Miss Amelia Berhel, Miss B. Plicque, Miss Alice Jones, Mrs. C. H. Thezan, Mrs. Sarah B. Allen, Mrs. S. F. Williams, Mrs. C. M. Keppard, Mrs. E. P. M'Carthy, Miss C. C. Kennedy, Miss L. M. White, Mrs. Rosa T. Edmunds, Miss E. B. Egleston, Miss R. M. Chevaillie, Mrs. K. J. Ricker, Mrs. A. E. Jones, Miss Addie M'Cord, Mrs. O. B. Cassanova, Mrs. H. M. Braguiens, Miss Emma Torrey, Miss Georgie Kerns, Miss L. Neelis, Miss M. J. O'Neill, Miss Julia Conroy, Mrs. J. E. Stehle, Miss M. Sassinot, Mrs. E. M. Keplinger, Miss K. Divine, Miss Adele Coudrain, Miss M. H. Hill, Miss O. K. Chellet, Miss R. King, Mr. Henry Reggio, Miss C. E. Carolan, Miss S. A. Grant, Miss Josephine Stewart, Mrs. M. L. Hampson, Miss Josephine Hille, Miss H. A. Pittman, Miss Rosa Carolon, Mrs. Palmyre Cartier, Miss Aline Ribet, Miss Alice Sherlock, Miss M. E. Lyons, Miss Gretta Donovan, Miss Annie Kerwin, Miss Mary Pearson, Miss M. A. Armstrong, Miss J. M. Mettaxa, Miss M. V. Serran, Miss A. E. King, Miss Emma Lacroix, Miss Alice Sheean, Miss Frances O'Connor, Mr. Warren Easton, Miss G. M'Cerran, Miss M. J. Paul, Mrs. Mary Moore, Miss S. V. Redwood, Miss A. M. Hero, Miss C. Nicol, Miss E. V. Relf, Miss Louise Faust, Miss Sallie Boyce, Miss F. L. Smith, Miss V. Russell, Miss Ellen Moran, Miss C. Lichenstein, Miss A. A. Finch, Miss E. J. Young, Mrs. D. R. Miller, Miss Helen M'Carthy, Miss Mary M'Cann, Miss M. A. Ferguson, Miss Marie L. Points, Miss Lizzie Donovan, Miss Julia Hedges, Mrs.
M. F. Gerrard, Miss K. Howley, Dr. Jas. Burns, Miss Antonis
281 Hart, Miss Ella M. Brown, Miss Jane M'Anulty, Miss Marie
Peres, Miss Honora Brown, Miss A. F. Duval, Miss Mary L. Barrett, Mr. W. J. Gahan, Mrs. V. Ducatel, Miss Emily Wagner, Miss Kate Toole, Miss Leonie Chevallo, Miss Ellen Carey, Miss Emma Ducoing, Miss A. M. Woods, Mr. Gustave Andry, Mrs. M. A. Doriocourt, Miss Ellen Quayle, Miss Rebecca Smith, Miss M. Bayhi, Miss Laura C. Harris, Mr. C. A. Barnes, Mrs. A. E. Van Camp, Mrs. Paul Ducatel, Miss Louise Van Dycke, Miss Eugenie Desdunes, Miss C. Hubbard, Mrs. Ann Bell, Miss M. O. Carter, Miss Rosa T. Moore, Miss Julia White, Miss Edith Harrison, Miss Susan Smith, Miss F. F. Huberwald, Mrs. H. Chaery, Miss Louise Lynch, Miss Lizzie Kennedy, Miss Mary Murphy, Mrs. Sylvia Easton, Mr. E. H. Trepagnier, Mrs. M. F. Stevens, Miss H. M. M'Carthy, Miss M. Marshall, Miss M. A. Stewart, Miss Lorenza

Bertus, Miss Mary Gordon, Miss M. E. Anderson, Miss K. Delcdernier, Miss Alice Clark, Miss Ellen Kennedy, Miss Rita C. Monrose, Miss Kate Quaid, Miss E. B. Thomas, Mr. Ulric Bettison, Miss I. Warner, Mr. T. J. O'Sullivan, Miss Ellen Gow, Miss M. S. Wilson, Mrs. A. L. Savio, Miss M. E. Cuggy, Miss Lucy Tallon, Miss Delphine Points, Miss Annie Scott, Miss K. J. Hughes, Miss Annie Sheean, Miss Emma Prados, Miss Sophie Blancq, Miss Julia Chevillon, Miss Mary B. Clark, Mrs. Parmela Cuculla, Miss Rosa Dione, Miss Esther Brando, Mr. A. B. Chandler, Miss Bridget Nolan, Miss J. A. Mayberry, Miss C. L. Stewart, Miss K. L. Magnon, Miss Kate E. Murphy, Miss Rebecca Fortune, Miss Marcella Curley, Miss M. O. Reynolds, Miss Mary M'Elligott, Miss A. E. O'Brien, Miss Mary Moore, Miss N. D. Cooper, Miss Jane Donelly, Miss J. Fitzgerald, Miss Mary L. Stokes, Mrs. H. Kilshaw, Miss J. F. Cripps, Miss M. A. Murphy, Miss E. J. O'Hara, Miss S. Llambias, Mrs. C. Collerton, Miss M. A. Riley, Miss H. L. Garrett, Mrs. A. W. Brown, Miss J. J. Ingraham, Miss M. E. Golden, Miss Amelia Kelsey, Mrs. L. Ward, Mr. M. M. Lowe, Miss M. E. Tank, Miss Ellen Clapp, Miss Maud O'Brien, Miss L. E. Lambourne, Mrs. H. M. Wells, Miss K. L. Glenn, Miss N. S. O'Connor, Miss Helena Phillips, Mrs. M. E. Mallam,

282 Miss M. Creswell, Miss Bettie Murphy, Miss M. Emanuel, Miss M. A. Mulligan, Miss Agnes Boyce, Mrs. W. J. Kelinpeter or Kleinpeter, Miss Agatha Meehan, Miss Emma J. Taylor, Miss L. C. King, Mr. Louis Leche, Miss N. P. Hero, Miss Nettie Parr, Miss I. Fredericks, Miss B. A. Houghton, Miss Mary J. Dowty, Miss Margaret Horen, Miss May Lemkin, Mrs. B. L. Beck, Miss Jessie Wilbur, Miss M. A. Wickes, Miss M. Bridgins, Miss I. E. O'Brien, Miss Eliza Wheaton, Miss H. M. Jourdan, Miss Ruth H. Walsh, Miss K. C. Connelly, Miss Georgia Hodgins, Miss E. Wilbur, Miss S. S. M'Enery, Miss P. E. Packard, Miss L. E. Sterling, Miss M. E. Sommerville, Mrs. L. M. Williams, Miss Blanche Cenas, Mrs. Josephine Reed, Mrs. C. D. Cooke, Mrs. Cora P. Beecher, Miss Etna Portner, Miss Sidonia Holmes, Mr. J. R. Hutchinson, Miss M. E. Finnerty, Miss E. B. Brown, Miss Irene Roudeau, Miss Minnie Weaver, Miss C. A. Forbes, Miss M. A. Reynolds, Miss Nellie Pickett, Miss M. A. Flanagan, Mrs. C. Reese, Miss L. C. Whitaker, Miss M. J. Dornon, Miss M. J. Kearney, Miss A. L. Beecher, Mrs. W. M. Carroll, Miss M. G. M'Lerenan, Miss D. L. Bostick, Miss Elese Hunter, Miss E. Allen, Miss A. E. M'Lirenan, Mrs. Ellen Hamilton, Miss C. A. Warner, Miss J. E. Morton, Mrs. M. E. Westerfield, Mrs. M. A. Martinez, Miss Mary Clarkson, Miss Ida Halberg, Miss E. Verlander, Mr. C. P. Guichard, Mrs. P. H. Saffold, Miss E. E. Vigers, Miss Amelia Chiapella, Miss Mary E. Penn, Miss Jennie G. Simms, Miss J. C. Berbel, Mr. J. J. O'Connor, Miss L. S. Howard, Mrs. M. E. Fortier, Miss Mathilda Ohlsen, Miss Ada V. Rousseau, Mr. S. C. Clark, Mrs. L. B. Anderson, Mrs. A. E. Chase, Miss M. A. Gardiner, Miss Maggie Redlich, Miss N. E. Nicholls, Miss E. C. Wheelahan, Mrs. M. E. Holmes, Miss E. F. Hayden, Mrs. M. J. Williams, Miss J. E. Mooney, Miss M. J. Turner, Miss Maggie Crawford, Miss H. E. Lawrence, Miss A. E. Kilgrove, Miss F. S. Dalacy, Miss E. L. Rodriguez, Miss Annie Leddy, Miss M. A. Sullivan, Miss Sallie Payne,

Miss Lizzie Keeling, Miss Susan Schreiver, Miss Julia Clapp, Mr. T. L. Preston, Miss H. O. White, Miss L. E. Prest, Miss Fannie I. Dart, Miss E. Gardenghi, Miss Anna Dyer, Miss Emma T. Rosner, Miss Isabel Ferguson, Miss May Brooks, Miss Sarah H.
283 Evans, Miss May E. Blood, Miss May Clack, Miss M. H. Hallaran, Miss Eliza Clark, Miss C. A. Beck, Mrs. R. Railpon, Miss Kate Kelly, Miss G. G. McManus, Miss Annie Theil, Miss A. L. Pascoe, Miss C. W. Bentley, Miss Florence Gordon, Miss Mary A. Tallieu, Mrs. G. A. Anderson, Miss Isabel Ryan, Mrs. F. V. Hooper, Miss Nanon J. Kelley, Miss Mathilda Reuter, Miss N. B. Harthorne, Mrs. J. R. Dicks, Miss Lizzie Kelly, Miss Emily Olschner, Miss May A. Leddy, Miss R. T. Murphy, Miss Emma Quick, Anita Ball, G. Black, Mathilda Bernard, M. Bull, J. Brown, O. Brennan, A. Cornwell, R. Carolan, R. C. Chamberlain, M. M. Campanel, E. M. Clark, B. Carroll, A. J. Dougherty, N. Donovan, Alica Dickson, Mary Daly, Selina Duvic, Emily Dart, M. De Boer, D. Daignan, H. Diamond, E. B. Eagleson, Alica Ellis, Georgie Fountain, A. A. Finch, M. Flanagan, J. Gallagher, Kate Hughes, L. Hentich, Kate Howley, B. Hynes, M. Halloran, Irene Hester, Louise Hornbeck, Ida Halberg, E. Hamilton, A. Harper, C. M. Holland, N. Houlgrave, M. Harrison, M. G. Holmes, B. Harthorne, Daisy Jackson, N. James, I. E. Joyce, L. Kilshaw, A. C. Kearney, Mary Kennedy, A. Kennedy, M. D. Kennedy, J. Lahargue, M. A. Michel, L. Mulcey, A. Michel, B. Mayhen, B. Maher, M. D. Moore, M. Michel, Lizzie Neelis, N. E. Nicholls, M. Orrantia, Agatha Pretus, F. Powers, R. M. Pascoe, L. A. Patton, G. Peyton, A. Payne, M. Ryan, S. J. Stephens, S. A. Steele, M. Smith, L. Smith, C. M. Spellicy, J. Simon, M. Spellicy, S. Smith, N. Shelly, A. Stickney, C. Stringer, D. Sheehan, Kate Sullivan, Martha Spence, Rosalie Shoeffer, E. J. Taylor, Alice Young, B. Allen, C. Amman, E. Bernard, E. O. Boyle, M. Barrow, B. Booth, Sarah Brooks, B. Blanc, J. Burke, C. Byrne, D. Burt, D. Cosgrove, M. Collins, E. Cure, E. Cronan, M. Caldwell, L. Chevolleau, E. Chineau, M. Carithers, M. T. Cochran, M. Carroll, M. Connelly, M. Collier, M. Duignan, H. Daly, M. Donelly, C. Denny, B. Doyle, E. Ducts, J. Foster, A. Gould, R. Hevvart, M. Hausman, B. Heavy, J. Jacquet, C. Killelae, J. Kinney, G. H. Kelley, M. Kelly, Mary Kelly, M. Lane, M. Lardner, C. Moffat, E. M'Cabe, M. M'Cormick, E. M'Ginnis, B. M'Keone, E. Nides, M. Morton, H. O'Connor, M. A. Pickett, E. Rhobacher, M. Riley, N. J. Rayna, John Ryan, M. Ryan, M. Schreiver, M. J.
284 Stansbury, M. Shea, M. White, J. C. Watkins, A. Wilcox, A. Waters, which said parties were relators in the said supreme court of the State of Louisiana and are defendants in error in this writ, and The Board of Liquidation of the City Debt, which was defendant in the said supreme court of the State of Louisiana and is plaintiff in error in this writ, The Drainage Commission of New Orleans being an intervenor in said supreme court of the State of Louisiana, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said

State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the con-
285 struction of the clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Board of Liquidation of the City Debt, defendant in said supreme court of the State of Louisiana and plaintiff in error in this writ, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 10th day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

{ Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La. }

E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
E. D. WHITE,
Associate Justice Supreme Court of the United States.

286 [Endorsed:] No. 13034. Supreme court of La. Board of Liquidation of City Debt *et al. versus* State *ex rel.* Miss L. B. Wilder *et als.* Writ of error. Filed July 14, 1899. T. McC. Hyman, clerk.

287 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Miss Lucretia B. Wilder, Mrs. Anna B. Cook, J. E. Seaman, J. V. Calhoun, J. H. Buckley, T. W. Dyer, Mrs. Mary Stamps, Miss H. A. Suter, Miss H. W. Seymour (now Mrs. Gresham), Miss Susie B. Elder, Miss Armentine Vienne, Miss M. Cusach, Miss B. Woods, Mr. A. S. Leche, Miss J. E. Linsler, Miss M. E. Pursell, Miss I. D. Pickens, Miss Kate Slack, Miss M. A. Curran, Mr. W. S. M'Elroy, Miss Carrie Forrer, Mrs. A. L. Howard, Miss M. G. Oliver, Miss Fannie A. Stringer, Miss Ida Whitaker,

Miss Fannie S. Harby, Miss Louise Bertel, Mr. Vincent Mielly, Miss M. A. Nugent, Miss K. E. Eastman, Miss S. Bloomfield, Miss O. Woodworth, Mrs. Esther Dobie, Mrs. E. C. Hunter, Miss E. C. Dowty, Mr. D. A. Blanchard, Mrs. C. A. Curtis, Miss M. E. M'Loughlin, Miss H. L. Mylott, Miss M. A. Broderick, Miss M. G. Fischer, Miss B. Furneaux, Miss Ada Jenks, Miss M. H. O'Connor, Miss A. M. Dart, H. B. Folk, Miss Isabella Simmons, Miss Charlotte Stuart, Miss Nellie H. Watson, Miss Sallie Harris, Miss G. I. Lambourne, Miss Jennie Reese, Miss M. L. Martin, Miss J. C. Dodge, Miss Isabelle Levy, Mrs. M. E. McDonald, Mrs. J. C. Robinson, Miss Eliza Todd, Mrs. N. E. Taliafero, Miss Ida Patton, Miss M. A. Ames, Miss F. L. Flemich, Miss Clemence Charles, Miss Olivia Pitard, Miss M. A. Larkin, Mrs. R. Sulakoski, Miss M. Nevin, Mr. J. H. Heslin, Mrs. Annie Macken, Miss I. B. Grant, Miss E. L. Venables, Miss K. M. Hamblett, Miss Maria Mulvey, Miss A. J. Hamilton, Miss A. Conwell, Miss Annie Sinclair, Miss A. S. Miller, Miss Julia Donovan, Miss H. M. Hewitt, Miss T. A. Sisa, Miss Emma B. Lloyd, Mrs. C. V. Sproule, Miss A. Paddon, Miss R. M. Woodley, Mrs. K. C. M'Cann, Miss M. M'Cord, Miss Cecilia Coll, Miss Carrie Labatt, Miss Julia Mulvey, Miss Lizzie Barry, Miss Julia Buckley, Miss B. E. Sullivan, Miss Ida Bennett, Miss Mary Walsh, Miss Anna Stokes, Miss Theresa Hartnett,
288 Miss Laura J. Murphy, Mr. A. P. Williams, Miss R. E. Campanel, Miss Amelia Berhel, Miss B. Plicque, Miss Alice Jones, Mrs. C. H. Thezan, Miss Sarah B. Allen, Mrs. S. F. Williams, Mrs. C. M. Keppard, Mrs. E. P. McCarthy, Miss C. C. Kennedy, Miss L. M. White, Mrs. Rosa T. Edmunds, Miss E. B. Egleston, Miss R. M. Chevaillie, Mrs. K. J. Ricker, Mrs. A. E. Jones, Miss Addie McCord, Mrs. O. B. Cassanova, Mrs. H. M. Braguiens, Miss Emma Torrey, Miss Georgie Kerns, Miss L. Mellis, Miss M. J. O'Neill, Miss Julia Conroy, Mrs. J. E. Stehle, Miss M. Sassinot, Mrs. E. M. Keplinger, Miss K. Divine, Miss Adele Coudrain, Miss M. H. Hill, Miss O. K. Chellet, Miss R. King, Mr. Henry Reggio, Miss C. E. Carolan, Miss S. A. Grant, Miss Josephine Stewart, Mrs. M. L. Hampson, Miss Josephine Hille, Miss H. A. Pittman, Miss Rose Carrolan, Mrs. Palmyre Cartier, Miss Aline Ribet, Miss Alice Sherlock, Miss M. E. Lyons, Miss Gretta Donovan, Miss Annie Kerwin, Miss Mary Pearson, Miss M. A. Armstrong, Miss J. M. Mettaxa, Miss M. V. Serran, Miss A. E. King, Miss Emma Lacroix, Miss Alice Sheean, Miss Frances O'Connor, Mr. Warren Easton, Miss G. M'Cerran, Miss M. J. Paul, Mrs. Mary Moore, Miss S. V. Redwood, Miss A. M. Hero, Miss C. Nicol, Miss E. V. Relf, Miss Louise Faust, Miss Sallie Boyce, Miss F. L. Smith, Miss V. Russell, Miss Ellen Moran, Miss C. Lichtenstein, Miss A. A. Finch, Miss E. J. Young, Mrs. D. R. Miller, Miss Helen M'Carthy, Miss Mary M'Cann, Miss M. A. Ferguson, Miss Marie L. Points, Miss Lizzie Donovan, Miss Julia Hedges, Mrs. M. F. Gerrard, Miss K. Howley, Dr. Jas. Burns, Miss Antonis Hart, Miss Ella M. Brown, Miss Jane M'Anulty, Miss Marie Peres, Miss Henora Brown, Miss A. F. Duval, Miss Mary L. Barrett, Mr. W. J. Gahan, Mrs. V. Ducatel, Miss Emily Wagner, Miss Kate Toole, Miss Leonie Chevallo,

Miss Ellen Carey, Miss Emma Ducoing, Miss A. M. Woods, Mr. Gustave Andre, Mrs. M. A. Doricourt, Miss Ellen Quayle, Miss Rebecca Smith, Miss M. Bayhi, Miss Laura C. Harris, Mr. C. A. Barnes, Mrs. A. E. Vancamp, Mrs. Paul Ducatel, Miss
289 Louise Van Dycke, Miss Eugenie Desdunes, Miss C. Hubbard, Mrs. Ann Bell, Miss M. O. Carter, Miss Rosa T. Moore, Miss Julia White, Miss Edith Harrison, Miss Susan Smith, Miss F. F. Huberwald, Mrs. H. Cheary, Miss Louise Lynch, Miss Lizzie Kennedy, Miss Mary Murphy, Mrs. Sylvia Easton, Mr. E. H. Trepagnier, Mrs. M. F. Stevens, Miss H. McCarthy, Miss M. Marshall, Miss M. A. Stewart, Miss Lorenza Bertus, Miss Mary Gordon, Miss M. E. Anderson, Miss K. Delesdernier, Miss Alice Clark, Miss Ellen Kennedy, Miss Rita C. Monrose, Miss Kate Quaid, Miss E. B. Thomas, Mr. Ulric Bettison, Miss I. Warner, Mr. T. J. O'Sullivan, Miss Ellen Gow, Miss M. S. Wilson, Mrs. A. L. Savio, Miss M. E. Cuggy, Miss Lucy Tallon, Miss Delphine Points, Miss Annie Scott, Miss K. J. Hughes, Miss Annie Sheean, Miss Emma Prados, Miss Sophie Blancq, Miss Julia Chevillon, Miss Mary B. Clark, Mrs. Parmela Cuculla, Miss Rosa Dione, Miss Esther Brando, Mr. A. B. Chandler, Miss Bridget Nolan, Miss J. A. Mayberry, Miss C. L. Stewart, Miss K. L. Magnon, Miss Kate E. Murphy, Miss Rebecca Fortune, Miss Marcella Curley, Miss M. O. Reynolds, Miss Mary M'Elligott, Miss A. E. O'Brien, Miss May E. O'Brien, Miss Mary Moore, Miss N. D. Cooper, Miss Jane Donelly, Miss J. Fitzgerald, Miss Mary L. Stokes, Mrs. H. Kilshaw, Miss J. F. Cripps, Miss M. A. Murphy, Miss E. J. O'Hara, Miss L. Llambias, Mrs. C. Collerton, Miss M. A. Riley, Miss H. L. Garrett, Mrs. A. W. Brown, Miss J. J. Ingraham, Miss M. E. Golden, Miss Amelia Kelsey, Mrs. L. Ward, Mr. M. M. Lowe, Miss M. E. Tank, Miss Ellen Clapp, Miss Maud O'Brien, Miss L. E. Lambourne, Mrs. H. M. Wells, Miss K. L. Glenn, Miss N. S. O'Connor, Miss Helena Phillips, Mrs. M. E. Mallam, Miss M. Creswell, Miss Bettie Murphy, Miss M. Emanuel, Miss M. A. Mulligan, Miss Agnes Boyce, Mrs. W. J. Kelinpeter (Kleinpeter), Miss Agatha Meehan, Miss Emma J. Taylor, Miss L. C. King, Mr. Louis Leche, Miss N. P. Hero, Miss Nettie Parr, Miss I. Fredericks, Miss V. A. Houghton, Miss Mary J. Dowty, Miss Margaret Horen, Miss May Lemkin, Mrs. B. L. Beck, Miss Jessie Wilbur, Miss M. A. Wickes, Miss
290 M. A. Wickes, Miss M. Bridgins, Miss I. E. O'Brien, Miss Eliza Wheaton, Miss H. M. Jourdan, Miss Ruth H. Walsh, Miss K. C. Connelly, Miss Georgia Hodgins, Miss E. Wilbur, Miss S. S. M'Enery, Miss P. E. Packard, Miss L. E. Sterling, Miss M. E. Sommerville, Mrs. L. M. Williams, Miss Blanche Cenas, Mrs. Josephine Reed, Mrs. C. D. Cooke, Mrs. Cora P. Beecher, Miss Etna Portner, Miss Sidonia Holmes, Mr. J. R. Hutchinson, Miss M. E. Finnerty, Miss E. B. Brown, Miss Irene Rondeau, Miss Minnie Weaver, Miss C. A. Forbes, Miss M. A. Reynolds, Miss Nellie Pickett, Miss M. A. Flanagan, Mrs. C. Reese, Miss L. C. Whitaker, Miss M. J. Dornon, Miss M. J. Kearney, Miss A. L. Beecher, Mrs. W. M. Carroll, Miss M. G. McLeremau, Miss D. L. Bostick, Miss Elese Hunter, Miss E. Allen, Miss A. E. M'Lerinan, Mrs. Ellen Hamilton, Miss C. A. Warner, Miss J. E. Morton, Mrs.

M. E. Westerfield, Mrs. M. A. Martinez, Miss Mary Clarkson, Miss Ida Halberg, Miss E. Verlander, Mr. C. P. Guichard, Mrs. P. H. Saffold, Miss E. E. Vigers, Miss Amelia Chiapella, Miss Mary E. Penn, Miss Jennie G. Simms, Miss J. C. Berhel, Mr. J. J. O'Connor, Miss L. S. Howard, Mrs. M. E. Fortier, Miss Mathilda Ohlsen, Miss Ada V. Rosseau, Mr. S. C. Clark, Mrs. L. B. Anderson, Mrs. A. E. Chase, Miss M. A. Gardiner, Miss Maggie Redlich, Miss N. E. Nicholls, Miss E. C. Wheelahan, Mrs. M. E. Holmes, Miss E. F. Hayden, Mrs. M. J. Williams, Miss J. E. Mooney, Miss M. J. Turner, Miss Maggie Crawford, Miss H. E. Lawrence, Miss A. E. Kilgrove, Miss F. S. Dalacy, Miss E. L. Rodriguez, Miss Annie Leddy, Miss M. A. Sullivan, Miss Sallie Payne, Miss Lizzie Keeling, Miss Susan Schreiver, Miss Julia Clapp, Mr. T. L. Preston, Miss H. O. White, Miss L. E. Prest, Miss Fannie I. Dart, Miss E. Gardenghi, Miss Anna Dyer, Miss Emma T. Rosner, Miss Isabelle Ferguson, Miss May Brooks, Miss Sarah H. Evans, Miss May E. Blood, Miss May Clack, Miss M. H. Hallaran, Miss Eliza Clark, Miss C. A. Beck, Mrs. R. Railpon, Miss Kate Kelly, Miss C. G. M'Manus, Miss Annie Theil, Miss A. L. Pascoe, Miss C. W. Bentley, Miss Florence Gordon, Miss Mary A. Tallieu, Mrs. G. A. Anderson, Miss Isabelle Ryan, Mrs. F. V. Hooper, Miss Nanon
291 J. Kelley, Miss Mathilda Reuter, Miss N. B. Harthorne, Mrs. J. R. Dicks, Miss Lizzie Kelly, Miss Emily Olschner, Miss May A. Leddy, Miss R. T. Murphy, Miss Emma Quick, Anita Ball, G. Black, Mathilda Bernard, M. Buil, J. Brown, O. Brennan, A. Cornwell, R. Carolan, R. C. Chamberlain, M. M. Campanel, E. M. Clark, B. Carroll, A. J. Dougherty, N. Donovan, Alica Dickson, Mary Daly, Selina Duvic, Emily Dart, M. De Boer, D. Daignan, H. Diamond, E. B. Eagleson, Alica Ellis, Georgie Fountain, A. A. Finch, M. Flanagan, J. Gallagher, Kate Hughes, L. Hentich, Kate Howley, B. Hynes, M. Halloran, Irene Hester, Louise Hornbeck, ida Halberg, E. Hamilton, A. Harper, C. M. Holland, N. Houlgrave, M. Harrison, M. G. Holmes, B. Harthorne, Daisy Jackson, N. James, I. E. Joyce, L. Kilshaw, A. C. Kearney, Mary Kennedy, A. Kennedy, M. D. Kennedy, J. Lahargue, M. A. Michel, L. Mulvey, A. Michel, B. Mayhen, B. Maher, M. D. Moore, M. Michel, Lizzie Neelis, N. E. Nicholls, M. Orrantia, Agatha Pretus, F. Powers, R. M. Pascoe, L. A. Patton, G. Peyton, A. Payne, M. Ryan, S. J. Stephens, S. A. Steele, M. Smith, L. Smith, C. M. Spellicy, J. Simon, M. Spellicy, S. Smith, N. Shelly, A. Stickney, C. Stringer, D. Sheehan, Kate Sullivan, Martha Spence, Rosalie Shoeffer, E. J. Taylor, Alice Young, B. Allen, C. Amman, E. Bernard, E. O. Boyle, M. Barrow, B. Booth, Sarah Brooks, B. Blanc, J. Burke, C. Byrne, D. Burt, D. Cosgrove, M. Collins, E. Cure, E. Cronnan, M. Caldwell, L. Chevolleau, E. Chineau, M. Carithers, M. T. Cochran, M. Carroll, M. Connelly, M. Collier, M. Duignan, H. Daly, M. Donnelly, C. Denny, B. Doyle, E. Ducts, J. Foster, A. Gould, R. Hevyart, M. Hausman, B. Heavy, J. Jacquet, C. Killelae, J. Kinney, G. H. Kelley, M. Kelley, Mary Kelly, M. Lane, M. Lardner, C. Moffat, E. McCabe, M. M'Cormack, E. M'Ginnis, B. M'Keone, E. Nides, M. Morton, H. O'Connor, M. A. Pickett, E. Rhobacher,

M. Riley, N. J. Rayna, John Ryan, M. Ryan, M. Schreiver, M. J. Stansbury, M. Shea, M. White, J. C. Watkins, A. Wilcox,
292 — A. Waters, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within 30 days from date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein the said Board of Liquidation of the City Debt is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said Board of Liquidation of the City Debt, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 10th day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

E. D. WHITE,
Associate Justice, Supreme Court of the United States.

293 We hereby, this 18th day of July, 1899, accept due personal service of this citation on behalf of all the defendants in error, and waive service of the same.

CHAS. J. THÉARD,
For Self and for Arthur McGuirk & Henry L. Lazarus, Att'ys for Miss L. B. Wilder & als., Defendants in Error.

[Endorsed:] No. 13034. Supreme court of Louisiana. Filed July 18, 1899. T. McC. Hyman, clerk.

294 Supreme Court of the United States, October Term, 1899.

THE BOARD OF LIQUIDATION OF THE CITY DEBT, Plaintiff in Error,
vs.
THE STATE OF LOUISIANA on the Relation of Miss Lucretia B. Wilder *et al.* } No. 369.

THE DRAINAGE COMMISSION OF NEW ORLEANS, Plaintiff in Error,
vs.
MISS LUCRETIA B. WILDER ET AL. } No. 377.

It is hereby stipulated between the counsel on both sides of this controversy that in printing the transcript of record which has been filed covering both writs of error the pamphlet which was offered in evidence for the defense by the intervenor in the court of the first instance, entitled "A report on the drainage of the city of New Orleans, 1895," being the plan of drainage referred to in the pleadings as adopted by the drainage act of 1896, and which went

up to the supreme court of Louisiana in original and has been brought up to this court in original, need not be printed, but may be referred to in original by any party.

W. W. HOWE,
For Drainage Comm'n of N. O.
BRANCH K. MILLER,
Attorney for Board of Liquidation of the City Debt.
CHAS. J. THÉARD,
For Self & for H. L. Lazarus, &
ARTHUR McGUIRK,
Att'ys for Miss L. B. Wilder & Others.
H. L. LAZARUS,

295 [Endorsed:] File No., 17,483, &c. Supreme Court U. S., October term, 1899. Term Nos., 369 & 377. The Board of Liquidation of the City Debt, P. E., *vs.* The State of Louisiana *ex rel.* Wilder and Drainage Commission of New Orleans, P. E., *vs.* Mrs. Lucretia B. Wilder. Stipulation to omit part of record in printing. Filed Jan. 24, 1900.

296 In the Supreme Court of the United States, October Term, 1899.

THE BOARD OF LIQUIDATION OF THE CITY DEBT, Plaintiff in Error,
vs.
THE STATE OF LOUISIANA on the Relation of Miss L. B. Wilder *et al.*, Defendants in Error. } No. —.

In the above entitled and numbered cause it is hereby stipulated and agreed that all maps, plans, and diagrams found in the transcript shall be omitted from the printed record; also the large paper-bound book or pamphlet containing a description and explation of the drainage system of the city of New Orleans.

That the above matters shall not be included in the printed record, and that, with these omissions, the same shall be sufficient.

CHAS. J. THÉARD,
For Self & Arthur McGuirk,
HENRY L. LAZARUS,
Att'ys for Def'ts in Error.
BRANCH K. MILLER,
Attorney for Plaintiffs in Error.

297 [Endorsed:] Supreme Court United States, October term, 1899. No. —. Board of Liquidation City Debt, plaintiff in error, *vs.* State of Louisiana *ex rel.* Miss L. B. Wilder, defendants in error. Agreement.

298 [Endorsed:] File No., 17,483. Supreme Court U. S., October term, 1899. Term No., 369. The Board of Liquidation, &c., P. E., *vs.* The State of Louisiana *ex rel.* Wilder. Stipulation to omit parts of record in printing. Filed Jan. 29, 1900.

Endorsed on cover: File No., 17,483. Louisiana supreme court. Term No., 369. The Board of Liquidation of the City Debt, plaintiff in error, *vs.* The State of Louisiana on the relation of Miss Lucretia B. Wilder *et al.* Filed August 8th, 1899. File No., 17,491. Term No., 377. The Drainage Commission of New Orleans, plaintiff in error, *vs.* Miss Lucretia B. Wilder *et al.* Filed August 17th, 1899.

14112

SUPREME COURT OF THE UNITED STATES.

No. ——.

October Term, 1899.

THE BOARD OF LIQUIDATION OF THE CITY DEBT and THE DRAINAGE COMMISSION OF NEW ORLEANS, Plaintiffs in Error,

versus

THE STATE OF LOUISIANA ex rel. MISS L. B. WILDER et als., Defendants in Error.

Writ of Error to the Supreme Court of Louisiana.

Brief for Defendant in Error, the Board of Liquidation of the City Debt, on Motion to Dismiss or Affirm.

Statement of the Case.

The Board of Liquidation of the City Debt, was created by Act No. 133 of the General Assembly of Louisiana of 1880; it was given exclusive control and direction of all matters relating to the bonded debt of the city of New

Orleans; by Section 11 of Act 110 of 1890, to carry into effect a constitutional amendment proposed by the General Assembly contemporaneously with the adoption of the act, which contemplated the retirement of all existing bonds of the city of New Orleans, except premium bonds, and the payment of certain floating indebtedness when reduced to judgments, the board, as established by the act of 1880, and as constituted when the act of 1890 was adopted, was again created a body corporate with the right of existence and succession until January 9, 1943; it was also provided that nothing in the act of 1890 should be construed to affect or change in any manner, the duties, powers, and functions, of the Board of Liquidation under laws then existing, not inconsistent with the act of 1890, but that all such duties, functions, rights, and powers, were maintained in full force.

The powers of the Board of Liquidation are distinct from those of the city of New Orleans; the former has sole and exclusive power over everything that relates to the city's bonded debt, and is charged besides this with the payment of a certain class of the city's floating indebtedess which may be reduced to judgments (see Act No. 67 of 1884, Section 1, Constitutional Amendment of 1892, Section 3 of Act 110 of 1890). The city exercises all ordinary municipal powers.

So separate and apart from each other are the board and the city, in their respective fields of authority, that there has been litigation between the two for the enforcement of the rights of one as against the other.

Board of Liquidation vs. City, 32 La. An. Reports, 915; Same vs. Same, 36 La. An. Reports, 524.

Charged with the custody and administration of funds and assets dedicated to the retirement of the bonded debt, the board is a trustee for all holders of municipal obligations payable out of the funds and property in its hands.

Under the acts of 1880, 1884 and 1890, it is not only its right, but its duty to resist any attempt to divert the same from their lawful destination, this has been recognized by the supreme court of Louisiana.

Rubera vs. Board of Liquidation, 35 La. An. Rep. 753.

State ex rel. Wood vs. Board of Liquidation, 40 La. An. 398.

This suit is for a mandamus to compel the Board of Liquidation to sell a sufficient number of constitutional bonds, to provide funds to pay the claims of defendants in error, which have been approved by the city council, under Article 315 of the state constitution, adopted in 1898. The judgment of the district court in which the suit was instituted was in favor of relators there, defendants in error here, making the mandamus peremptory.

The Board of Liquidation set up in defence that Article 317 of the Constitution of 1898, which directed that it should sell a sufficient number of the Constitutional Bonds issued under Act 110, 1890, to pay and discharge the school claims approved by the City Council, under Article 315 of the same Constitution, was in violation of Section 10 of Article 1, and of the Fourteenth Amendment, of the Constitution of the United States.

That the Constitutional Bonds under the amendment of 1892 and act 110 of 1890 could be issued only for:

First—The retirement of the then existing, valid outstanding bonds, of the city of New Orleans, premium bonds excepted.

Second—Judgments rendered against the city on floating debt claims arising prior to 1879, entitled to be funded under Act 67 of 1884. (See Constitutional Amendment, Section 1: Act 110 of 1890).

That the funds derived from the sale of constitutional bonds, under Sec. 3 of Act 110 of 1890 ~~(see Act of~~

~~1890, section 6),~~ could be used solely and exclusively for:

Retiring by payment all the then outstanding valid bonds of the city of New Orleans, and judgments rendered on floating debt claims created prior to 1879, entitled to be funded under Act 67 of 1884.

That the obligations of the following contracts, and the rights of the following parties, would be impaired if the direction of Article 317 of the Constitution of 1898, were carried into effect:

First—The holders of the Constitutional 4 per cent. bonds, who had the right to exclude from participation in the one per cent. tax, authorized by the constitutional amendment, and act of 1890, any person or obligation not enumerated in the same as entitled to receive any portion thereof.

Second—Contractors, who had made works of permanent public improvement, under section 10 of the act of 1890, by which they were payable out of the surplus described by section 8 of the act; which surplus is that which remained after paying the fixed charges enumerated in section 8; that these could not be increased by any legislation, of whatsoever character, posterior to the act of 1890; to issue the consiitutional bonds required by Article 317 would add to the mass, a burden not enumerated in Section 8, which would create a corresponding diminution of the surplus; that the city contractors had a right to this surplus, undiminished by any burden, beyond the fixed charges set out in section 8.

Third—The drainage contractors, and contracts for drainage work made by the Drainage Commission, payable out of the permanent public improvement fund, spoken of by sections 8 and 10 of the act of 1890, and devoted after January 1, 1898, to the specific permanent public improvement of drainage, and which, by sections 3 and 7,

of act 114 of 1896, was dedicated to the holders of the drainage bonds, and by section 7 of act 63 of 1898 to every person or corporation which had entered into contracts with the Commission.

The opinion of the supreme court of Louisiana, on the appeal of the defendant board, was to the following effect:

First—That the Board had the right to set up the unconstitutionality of Article 317 of the Constitution of 1898, on the authority of the Board of School Directors vs. New Orleans, 32 An. 96. (See Opinion.)

Second—That the operation of Article 317 is restrained by the Constitution of the United States.

Third—That the constitutional convention had the right to determine for itself, free from legislative and constitutional control, the extent to which permanent improvements should be made, within the limits of the city of New Orleans, and the amount to be expended for that purpose.

Fourth—That the surplus referred to in the acts of 1890 and 1896, and the constitutional amendment of 1892, was not, as contended by relators, the surplus which would remain after provision had been made for an issue of ten millions of dollars of constitution bonds, as provided by the amendment, but that it was the residue of any portion of the tax provided for by act 110, 1890, and the amendment, which was not needed for the payment and retirement of the particular bonds actually issued, and the claims therein specially provided for.

That the Board of Liquidation and the Drainage Commission, and those with whom they had contracted, were justified in placing that interpretation upon the legislation, and contract rights based upon the same.

Fifth—That the convention, while ordering the payment of the certificates held by relators, through sales of constitutional bonds, could not confer upon the holders

of those bonds rights which would in any way came in competition with the contract rights of creditors existing against the tax at the time of the adoption of the constitution; that though there was no mention in the constitution as to the rank of the bonds that would be issued to take up relator's obligations, that rank resulted from legal conditions, which could not be constitutionally interfered with; that while there was no constitutional objection to the convention ordering the Board of Liquidation to sell bonds to take up relator's certificates, there would be constitutional objection if the effect of the issuing of such bonds, would be to place the holders thereof on an equality with the holders of bonds issued to take up the bonds and claims provided for as to their funding and payment by act 110 of 1890, act 114 of 1896, and the constitutional amendment of 1892.

Sixth—That the constitutional bonds which relators seek to have issued, would really be drawn against any surplus which would remain of the 1 per cent. tax after the payment of all bonds issued, and to be issued by the Board of Liquidation under act 110 of 1890, and the constitutional amendment of 1892, in order to fund, retire and pay the bonds and debts therein specifically enumerated; and also bonds issued and to be issued by the Drainage Commission, under the provisions and authority of act 114 of 1896, to pay contracts existing at the date of the adoption of the Constitution, which were entered into, upon the faith of the surplus directed to be set aside to the credit of the Permanent Public Improvement Fund by act 110 of 1890 and act 114 of 1896, and the constitutional amendment of 1892.

Seventh—That the effect of this would be, to subordinate the rights of holders of bonds issued by the Drainage Commission to pay for contracts entered into after the adoption of the Constitution of 1898, to those of the holders of the Constitutional Bonds issued under Article 317.

It would thus appear from the opinion, that every ground assigned by defendant as a reason for its non-compliance with article 317, has been maintained by the state supreme court, and its refusal to obey the command of article 317, and every defence it raised to the suit of relators; which was not to obtain the relief which is outlined in the opinion, but to enforce the rights which are in terms undertaken to be conferred by Article 317, differing *in toto* from what the state supreme court in its *opinion* intended to award, is affirmed to be correct and well founded in law.

It is rational to assume that court, should have rendered such a decree as would give effect to the principles, by which, the opinion declares, the case was governed; yet a slight examination conclusively shows that the decree actually rendered, is the reverse of this; the judgment of the district court is affirmed without qualification or limitation of any kind whatsoever; its judgment is a hard and fast enforcement of the directions of Article 317 which ordered the sale of a bond differing radically from that which is described in the opinion of the supreme court; to have acquiesced in the judgment of the district court would have been to disregard every consideration which the opinion of the supreme court unequivocably declares should control the defendant; the affirmance of the judgment of the district court directs defendant to do everything which the opinion of the supreme court declares it had no right to do, and which it was its duty to refuse doing.

As has been seen, by article 315 of the constitution of 1898, the city of New Orleans is authorized and required to examine into and assume the payment, of certain obligations of the Board of School Directors of the public schools of the parish of Orleans, for unpaid salaries and other legitimate claims for the years 1882, 1883 and 1884; and for certain unpaid salaries for the years 1885, 1886 and 1887,

in the hands of the original owners, who had in no wise parted with their rights of ownership, or pledged same, as might be found by the city to be equitably due by the Board.

By Article 316 the City Council is directed to issue certificates of indebtedness to the owners of such claims, as were found to be equitably due; such certificates to be paid by the defendant, the Board of Liquidation.

In order to raise funds to pay the claims so certified to be due by the Council, the defendant is directed by Article 317 to issue and sell a sufficient number of constitutional bonds of the city of New Orleans, provided for by Act No. 110 of the General Assembly for the year 1890, and by the amendment to the constitution, submitted to the people by said act, and adopted at the general election of 1892.

Act 110 of 1890 is composed of a joint resolution of the senate and house of representatives, proposing an amendment to the constitution, and an act known on the calendar as Act No. 36, to carry the amendment into effect; the proposed amendment provides for the funding of the bonded debt of the city of New Orleans, other than premium bonds, into four per cent. bonds, and for a special tax to pay the bonded debt of the city, also exempting the four per cent. bonds from taxation; the act is to carry the amendment into effect; its title declares its purpose to authorize and direct the city to issue, through defendant, four per cent. bonds, known as constitutional bonds of the city of New Orleans, payable fifty years from date; to direct the retirement of the then outstanding bonded debt of the city, premium bonds excepted, by the sale of constitutional bonds, the application of the proceeds by defendant to the payment of such outstanding bonds, premium bonds excepted, and to the payment also of certain judgments against the city on floating debt claims created

prior to the year 1879; after other provisions, not important to be mentioned at this time, it directs the levy and collection by the city of a tax of one per cent. to be paid over to the defendant, to be applied to the bonded debt of the city of New Orleans; after declaring that the further purpose of the act is to provide "for the disposition of the surplus of said tax, not required for the aforesaid bonded debt," it is added, "and to recognize said tax as the contract right of the holders of the aforesaid bonds * * * "

The first section of Act 110 (or No. 36) of 1890 declares that, *in order to provide for the retirement of the outstanding bonded indebtedness of the city*, and such other indebtedness, as under laws *then existing*, was, or might become, entitled to be funded into any series of bonds, premium bonds excepted, the city was authorized to issue bonds to the amount of ten millions of dollars; that the bonds, after being signed by the mayor and comptroller of the city, were to be delivered to defendant, to be used for the purposes before mentioned, in accordance with the provisions of the act; a daily report to the mayor by the secretary of defendant was required, of the number of bonds issued and delivered by it, and the purposes for which they were so issued; this report to be laid before the council by the mayor, and the finance committee was required to examine and verify the same at least once a month, and report the result of their examination to the council.

By section 2, defendant was empowered to dispose of such amounts of constitutional bonds, *as might be deemed requisite*, for the purposes thereafter expressed in the act; and by section 3, all funds derived from such sales were to be deposited to the credit of a special fund, called the "Bond Sales Fund," which, it is declared, "*shall be used solely and exclusively for the purpose of retiring by payment all the said now outstanding valid bonds of the city of New Orleans, matured or subject to be called, in-*

cluding certificates or bonds issued under the fourth section of Act No. 58 of 1882, and including judgments now or hereafter rendered on floating debt claims, prior to 1879, entitled to be funded under Act No. 67 of 1884, but excluding premium bonds " * * * * *

By section 7, in order to provide for the payment of the principal and interest of the constitutional bonds authorized by the act, and all other outstanding valid bonds of the city of New Orleans, it was made the duty of the council and of the proper officers of the city, for the year 1892, and annually thereafter, until the principal and interest of the bonds were fully paid, to levy a special *ad valorem* tax of 1 per cent. upon all the taxable property, real, personal and mixed, in the city of New Orleans; the proceeds of the tax to be paid over to the fiscal agent of defendant, each day, as collected.

By the terms of Section 8, out of the proceeds of the said tax, beginning in the year 1892, defendant was directed annually to provide for the carrying of the premium bond plan, and payment of the interest upon the constitutional bonds authorized to be issued by the act, and interest on all other outstanding interest bearing bonds of the city; and, after the year 1925, for an annual sinking fund necessary to call and retire the number of bonds provided for by section 9; by this latter, the Board was directed to take up $500,000 of bonds per annum, beginning in the year 1925, until and including the year 1937, after which it was to take up and retire annually $700,000 of bonds.

After thus prescribing how, and for what purposes the proceeds of the 1 per cent. tax shall be annually disbursed, defendant is then directed by section 8, after deducting its expenses, and paying any deficiency in the interest fund of any previous year, to pass one half of the surplus of said tax to the credit of a special fund, to be known as the "Permanent Public Improvement Fund," to be disposed

of as thereafter provided; the other half of said surplus to be paid over to the School Board of the city of New Orleans, to be used in the maintenance and support of the public schools of the city.

Section 10 ordains, that the "Permanent Public Improvement Fund," shall be used exclusively for the construction of permanent public improvements in the city, such as levees, canals, drainage stations, pavements, public buildings, public parks and bridges; all ordinances passed by the council to be paid out of the fund, to be first approved by defendant; the true intent and meaning of the clause being declared, not to give the Board any authority to say to what improvement the fund shall be applied, but only to see that it was applied exclusively to the construction of improvements that were permanent.

By the terms of section 16, all the substantial provisions of the act are declared to be a contract between the state, the city, the taxpayers thereof, and every holder of constitutional bonds.

By Act 114 of 1896, the General Assembly created a Board of Drainage Commissioners, giving it full power to contfol and execute the drainage of the city, and to carry out substantially the plan for such drainage, adopted by the Council, by ordinance 10,091, C. S., approved July 10th, 1895, so far as it might find said plan desirable and practicable, with the right, however, to modify same, as, in its judgment, circumstances might require.

By the third section of the act, the portion of the fund in the hands of the defendant, under the provisions of sections 8 and 10 of act No. 110, of 1890, accruing to public works (meaning the "Permanent Public Improvement Fund,") was dedicated and applied to the purposes of the act; and by section 7 all the provisions of the law respecting the dedication and application of funds and money, were declared to constitute a contract with the

holder or holders of the bonds issued under section 6 of the act.

In 1898, the General Assembly, by Act No. 63 of its session of that year, amended Act No. 114, of 1896, in certain particulars; the principal one being a reduction to one million five hundred thousand, the five millions dollars of bonds authorized by the act of 1896, and by section 7, expressly extending the dedication and application of funds and money, as to all persons entering into contracts with the Commission, besides the holders of its bonds; declaring that such dedication and application to be a contract, the obligation of which shall not be impaired.

Such are the constitutional and legislative provisions upon the interpretation of which the case of the defendant for the most part depends.

The City Council, in obedience to the mandate of Article 315 of the constitution of 1898, has examined and certified as being equitably due, certain claims of the character described in the said article, held by relators, amounting, in the aggregate, to $115,000; demand having been made upon defendant to comply with the direction of article 317 of the constitution, and sell a sufficient number of the constitutional bonds to pay the claims of relators, and this demand having been refused by defendant, relators brought this suit by mandamus, to compel its compliance with Article 317.

The defence is, that the latter is in contravention of Section 10 of Article 1 and the Fourteenth Amendment, of the federal constitution, in that it impairs the obligation of contracts; deprives persons of their property without due process of law, and denies them the equal protection of the laws; that defendant is vested by law with full capacity to defend the rights of the persons who are thus injuriously affected.

There was judgment in the district court of the state in favor of relators.

The opinion of the district court is unfortunately brief; it simply declares that, after hearing extended argument, the court is in doubt as to the proper judgment to render; that, being a tribunal of inferior jurisdiction, it preferred that the matters at issue be determined by a higher court.

It will be remembered that by section 8 of act 110 of 1890, the fixed annual charges against the 1 per cent. tax are established, and disposition is made of the remaining surplus; the section declares that, after the defendant shall have provided out of the tax, for the carrying of the premium bond plan, the payment of the interest upon the constitutional bonds authorized by the act itself, and the interest upon all other outstanding interest bearing bonds of the city, and after the year 1925, for an annual sinking fund; and, after making such provisions in each year, deducting the expenses incurred by the board and paying any deficiency in the interest fund of any previous year, one-half of the surplus shall be passed to the credit of the "Permanent Public Improvement Fund," to be used exclusively for the construction of permanent works of public improvement in the city; and the other half to the School Board of the city of New Orleans, to be used in the maintenance and support of the public schools; that to supply resources for the improvement of the city, on lines looking to its advancement, and to secure the benefits of public education, were prominent among the purposes of the act, appears not only from the provisions under discussion, but is made conspicuous by the title of the act itself, which, towards its conclusion, states the disposition of the surplus of the tax, not required for the bonded debt, as a substantial object of the statute; this purpose appearing in the title, is second in importance to no other threin set forth, not even to that authorizing the bond issue itself; it is as clear as language can state it, that section 8 intended that the whole of the 1 per cent. tax should be disposed of; that no part of it, however small, should be left without a

purpose, designated by the law under which it was levied and collected; after the defendant had paid the annual charges to carry the outstanding bonded debt, supplied any deficiency in the interest fund of any previous year, had paid its own current expenses, the surplus, whatever it might be, was dedicated to the purposes of permanent improvements and public schools; this dedication applied to the entire surplus; it mattered not whether, in amount, it varied in the several years; great or small, one-half was given to the improvement fund, and the other half to the School Board.

This is not in any degree affected by the number of constitutional bonds actually issued; if of the entire ten millions of dollars authorized, only a small portion thereof were put upon the market, the disposition of the surplus in its entirety, in equal portions, for the purposes named, would be unchanged; the amount required to discharge the burdens which are enumerated, it is quite easy to see, would not be the same each year; for instance, by the statement concerning the premium bond plan, found in the record, it appears that the amount requisite to carry it, increases by ten thousand dollars each year, until all the bonds are retired, when, of course, it will cease to be a charge at all; hence, the amount of the surplus each year in no manner affected its disposition.

As has been seen, the addition against the one per cent. tax, of any fixed charge or burden, which is not set out in section 8, will immediately effect a corresponding diminution of the surplus, and to that extent would be an invasion of any prior contract right to the surplus; the proposition of defendant is, that the surplus can not, by any process whatever, be lessened, without impairing the obligation of contracts, in the sense against that the fund, out of which they are made payable by law, is decreased in amount; no useful purpose can be accomplished, by ascertaining how much the diminution would be, with the view

of showing that it can be suffered without appreciable injury; such rights as the acts of 1890, 1896 and 1898 may give against the surplus, are vested in their entirety, in those in whose favor they are created; if they be rights, they can not be abated in the slightest degree, without the consent of the owners; if rights at all, they are property, and are not held subject to the judgment of other persons as to how far they are necessary to those to whom they belong.

On the Motion to Dismiss.

The motion to dismiss is founded, on the denial by defendants in error, that the supreme court of Louisiana denies to plaintiff in error, any right secured by the Constitution of the United States, which was set up and claimed.

There can be no doubt that wherever rights acknowledged or protected by the Constitution of the United States, are denied and invaded by state legislation, which is sustained by the judgment of the court of last resort of a state, this Court is authorized to interfere; the true jurisdictional test is made, if it appears that such a question is decided adversely to the federal right; it is of no consequence that the latter is recognized by the *opinion* of the state court, if the *decree* deprives the defendant of its benefit; nor is the case different, if the opinion should even make no mention of such a defence, but judgment is rendered which, by necessary intendment nullifies it, or denies its protection to the party claiming it.

The opinion here, extends the fullest recognition to all of the federal rights set up in the answer of defendant; it would seem that this would lead inevitably to a judgment giving the defendant the constitutional protection which it pleads, and to which the opinion declared it is entitled. There is, however, from the opinion, an abrupt

transition to a decree which oversteps and sets at naught every vital principle by which the opinion declared the case to be governed; while the reasoning of the court throws around the defendant all the protection afforded by the Constitution of the United States, it would appear that this was done for no other purpose than its annihilation by the decree; it is difficult to understand why the court should have been at such pains to precisely define the limitations placed by the federal constitution upon Article 317 of the state constitution of 1898, to follow its conclusions by a decree, which ignored and repudiated every one of them; to what purpose is it declared by the opinion, that all contract rights existing on May 12, 1898, when the state constitution went into effect, can not be prejudiced, or their obligations impaired by that instrument, and after this pronounce a decree which gives to the state constitution an effect which the opinion declares it can not have?

The judgment of the state supreme court affirms that of the district court, which was brought up by appeal; the judgment appealed from makes peremptory the mandamus sought by relators; it directs a literal compliance with Article 317, and accordingly the defendant board was directed to sell a sufficient number of constitutional bonds, to pay and satisfy the claims of relators; this without restriction or limitation whatsoever. The judgment of the district court was an order for the enforcement of Article 317 of the constitution, according to its literal terms; this provides for an issue of constitutional bonds which would stand upon an equal footing with all other bonds issued under the constitutional amendment of 1892, and the act of 1890. These authorize a single series of bonds every one of which is supported by all the guarantees contained in the two pieces of legislation. In emphatic terms, the opinion more than once declares, that no enforcement

of article 317 can be had, which will interfere with, or impair the obligations of any contract made prior to the adoption of the constitution of 1898; that the bonds to be issued for the payment of the claims sued upon, should be subordinate to all such rights; that they should be inferior in rank to such prior existing contracts, and shall be paid only after the latter are fully provided for, in the manner pointed out by the constitutional amendment and the act. The judgment of the district court contained no such conditions; its affirmance by the supreme court leaves the defendant in the same position it would have occupied had it acquiesced in, and proceeded to the execution of, and had not appealed from, the judgment of the court of first instance. Had this been defendant's course, the limitations of right, and the inferior character of the bonds ordered to be sold, made so conspicuous in the opinion of the supreme court, which the reasoning of the court so profusely declares, would never have come to light. The opinion of the supreme court prescribes what are defendant's rights, while it formulates a decree by which they are destroyed.

A federal question arises where the allegation is, that by a statute of a state it made a contract, and by another violated it, and the state court holds the latter statute valid.

The Binghampton Bridge, 3 Wal. 51.

Jefferson Bank vs. Skelly, 1 Black, 436.

Bridge Proprietors vs. Hoboken Co., 1 Wal. 116.

Delmas vs. Insurance Co., 14 Wal. 661.

University vs. People, 99 U. S. 309.

In the present case there was raised by special plea the defence, that article 317 was unconstitutional, null and void by reason of its being in contravention of Section 10, Article 1, and the Fourteenth Amendment of the Constitution of the United States, in the respect that it impaired the obligations of certain contracts, which were

specifically set out, and deprived certain parties of their property without due process of law; that defendant was constituted by the law of its creation and the statutes governing its conduct, a trustee, charged with the protection of all such contracts and persons. There could be no judgment against defendant without finding either that there were no such contracts as those set up; or that there was no impairment as was claimed, and that there was no violation of the fourteenth amendment, which conclusions are necessarily involved in a judgment adverse to defendant. These were the defences made, which stood as a bar to any judgment against the defendant, until the court decided that they were untenable. In this view, the judgment in question here, of necessity was adverse to the federal rights claimed. It could not have been rendered without determining that article 317 was not violative of the provisions of the federal constitution set up. A federal question was clearly presented and decided in favor of the state legislation, and against the right defendant claimed under the Constitution of the United States. The constitutionality of article 317 was drawn in question; the court found that it was repugnant to the inhibition upon a state, against making any law impairing the obligations of contracts, but the judgment of the court was in favor of its validity.

Under section 709 of the Revised Statutes, it is *the final judgment or decree*, and *not the opinion or the reasoning*, of the highest court of a state which may be examined, or reversed, or affirmed, in this Court upon a writ of error; therefore it is idle to refer the defendant to the opinion of the state supreme court, which recognizes every right set up by the defence, in the presence of a judgment by which without exception, they are taken away; wherever rights given by the constitution of the United States are denied or invaded by the *final judg-*

ment of the state court, the jurisdiction of this Court is clear.

It has been said, that "Everywhere in our decisions it has been held, that we may review the judgments of a state court, when the determination or *judgment* of that court, could not have been given, without deciding upon a right or authority claimed to exist under the Constitution, laws or treaties of the United States, and deciding against that right." Murray vs. Charleston, 96 U. S. 442.

The Court cited approvingly, the case of Armstrong vs. Treasurer of Athens county, 16 Peters, 281, where it was held sufficient to give this Court jurisdiction, that it appeared from the record of the state court that the federal question was necessarily involved in the decision, and that the court would not have given the judgment or decree which it did, without deciding against the federal right; nor will this court permit its jurisdiction to be defeated by any evasion of the federal question, or where reference to it by the state court is avoided; this is as much against a party's right within the meaning of section 709 of the Revised Statutes, as it it had been specifically referred to and the right directly refused. Chapman vs. Goodnow, 123 U. S., 548.

This case is not one where there are two grounds of decision, one federal and the other non federal, in which the Court may presume that it was decided on the nonfederal ground, or where the latter is sufficient to sustain the decision; there was no defence of any description that was not distinctly federal in its character; the sole ground of nullity urged against article 317, was its violation of the Constitution of the United States; there was no other issue for the court to determine; no decision could have been reached without concluding whether or not article 317 impaired the obligation of any of the contracts named, or deprived the persons described, of their property without due process of law; the judgment here is in favor of rela-

tors, who insisted that the Federal Constitution offered no obstacle to the enforcement of article 317, and against defendant who set up that it was a complete bar against the operation of article 317, or to its having any effect; there was no conceivable process by which relators could obtain a judgment, without deciding that article 317 was not in contravention of the Constitution of the United States; it was expressly drawn in question on the ground that it was so repugnant, and no effect could be given to it by the supreme court of the state, without deciding that there was no such repugnance, and in consequence rendering a decree adverse to the federal right.

An examination of the opinion of the state supreme court only emphasizes the soundness of defendants' complaint, that it has been thereby deprived of federal rights by the judgment of the court below; the opinion considers the federal questions raised, and resolves all in favor of defendant; but the decree gives to article 317 an effect irreconcilably inconsistent with this opinion; it is to no purpose that abundant recognition of the federal rights is extended by the opinion, if it affords no protection to defendant in the rights secured to it by the Constitution of the United States; the opinion gives point and crushing weight to the error of the judgment; if grounds for the reversal were not otherwise obvious and abounding, they would be abundantly furnished by the opinion which precedes it; every proposition concerning the federal rights set up by the defence, which is found in the opinion, is a ground for the reversal of the judgment; while it was said in Chapman vs. Goodnow 123 U. S. 548, that a right or immunity set up or claimed under the constitution or the laws of the United States may be denied, as well by evading a direct decision thereof, as by positive action, this case presents the remarkable trait, of an opinion, which declares that defendant is entitled to

all the federal protection it claims, and a decree which denies any.

The state can no more impair an existing contract by the constitutional provision than by legislative act.

Gunn vs. Barry, 15 Wallace, 610;

Delines vs. Mutual Insurance Company, 14 Wallace, 661;

Williams vs. Louisiana, 103 U. S. 637;

Durkee vs. Board of Liquidation, 101 U. S. 646;

Clay County vs. Society for Savings, 104 U. S. 579;

Moultry County vs. Savings Bank, 92 U. S. 631;

N. O. Gaslight Company vs. Louisiana Light Company, 115 U. S. 650.

As has been said, this is not a case where the judgment of the court below can be sustained upon grounds other than the one involved in the federal questions presented; there is here no non federal ground upon which the judgment under review can be maintained, independent of any federal question.

As a matter of fact, the only questions involved in the controversy are federal; the only grounds upon which the demands of relators were resisted by the defendant, were, that Article 317 of the Constitution of 1898 was in contravention of Section 10, Article 1, and of the Fourteenth Amendment of the Constitution of the United States; there could be no judgment of the lower court, except such as would either affirm or deny these propositions; under the showing made by the record, and even that made by the petition and answer alone, it is impossible to render any judgment in favor of relators, which does not of necessity, declare that Article 317 must have effect, notwithstanding the oft repeated averments of the answer that it is repugnant to the Constitution of the United States.

The federal questions, upon which the rights set up by the defence depend, are stated in the *opinion* of the

court, which goes to the extent of maintaining all that defendants claim in this respect. It may be then asked what is the ground of defendants' claim, that the judgment below can be reviewed here? The answer is plain, that while the *opinion* abundantly recognizes every protection of the Constitution of the United States which defendant claims, the whole are ignored by the court's *judgment*, which orders the defendant to carry into effect the provisions of article 317, without condition or limitation, in the face of the profuse declarations of the opinion, that, in view of the federal defences raised, article 317 is inoperative save under certain conditions and limitations, by which the federal rights set up by the defendant, are saved from impairment or invasion.

This is not a case where the federal question is evaded; it is not a case where the jungment of the lower court can be sustained upon any non federal ground, independent of the defences based upon the Constitution of the United States; it is the marvelous instance of a judgment which denies federal rights, which the opinion declares must be respected; a conclusion which follows reasons, inevitably tending to an opposite result; a demonstration, which proves the reverse of the inference drawn.

Relators suing for the literal enforcement of article 317, are met by pleas setting up its repugnancy to the Constitution of the United States; they are confronted with no other defence; defendant joined issue as to no other part of relator's case. The approval of the claim by the council of New Orleans under Article 315, their ownership by relators, the correctness of the amounts, were not questioned by the defendant. The sole question was, whether article 317 contravened of the Constitution of the United States; there was no room for the determination of the controversy upon any other ground; it is true that an argument was made, that defendant was without authority to raise the issues mentioned; also that if it had such

right the complaint was not well founded unless article 317 required the issue of more bonds than the ten million authorized by the constitutional amendment of 1892; but upon these issues the court decided in favor of the defendant, which necessarily brought it to the only remaining issue, viz.: the constitutionality *vel non* of article 317 questioned by defendant.

There can be no doubt that the constitutionality of article 317 of the constitution was drawn in question; this appeared by the express averments of the answer; it would be impossible for the court to find its way to the conclusion that article 317 was a valid constitutional enactment, without necessarily overriding the defendant's pleas, and deciding adversely to the federal rights set up.

It is sufficient that it appears from the record itself, that the repugnancy of the statute of the state to the constitution of the United States, was drawn into question, or that the question was applicable to the case, and although the record does not in terms state a misconstruction of the constitution of the United States, or that the repugnancy of the state statute to any part of that constitution, was drawn in question; it is sufficient if from the facts stated, such a question must have arisen, and that the judgment of the state court could not have been what it is, if there had not been a misconstruction, misapplication, or evasion, of the federal constitution, or that the same had been entirely ignored. Crowell vs. Randall, 10 Peters, 396.

It has often been decided, that it is sufficient also if it appears by clear and necessary intendment that the federal question must have been raised, or must have been decided, in order to have induced the judgment; or that the judgment could not have been rendered without deciding the federal question: the judgment here in question could not have been rendered without deciding adversely to the federal right set up in the answer.

Brown vs. Atwell, 92 U. S. 329; N. O. Waterworks vs. La. Sugar Co., 125 U. S. 29; De Sausure vs. Gaillard, 127 U. S. 234.

In the instant case, defendant was awarded the fullest satisfaction by the reasoning of the court; all of its defences were maintained by its opinion, only to be taken away by the judgment; while it has no complaint to make against the former, it has serious ground for objection to the judgment, which deprives it of every federal right so fully recognized by the opinion. It is difficult to understand the purpose of the court in reasoning out a perfect demonstration of the well-founded character of the defences set up by the answer, followed by a judgment which is tenable, only on the theory that all the defences were unfounded.

It has been held by this Court, that where it did not appear from the opinion of the court below that it had formally passed upon any question of a federal nature, still if the necessary effect of the decree was to determine adversely to the right or immunity set up under the constitution, there was jurisdiction over the final judgment of the supreme court of the state.

Roby vs. Colehaur, 146 U. S. 159-60.

Chicago, Burlington, etc. vs. Chicago, 166 U. S. 232.

Green Bay, etc., Canal Co. vs. Patten Paper Co., 172 U. S. 68.

Bearing in mind that this suit was defended on the sole ground that Article 317 of the Constitution was repugnant to the contract clause, and fourteenth amendment of the Constitution of the United States, the court, under the pleadings, was called upon to decide no other question after it had concluded that defendant had the right to raise these issues, and that it could do so, although the entire issue of ten million of bonds authorized by the constitutional amendment of 1892 had not been made. In a rational sense, it was impossible to direct defend-

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ant to carry article 317 into literal execution, without concluding that Section 10 of Article 1, and the Fourteenth Amendment to the Constitution of the United States, furnished no impediment in the way of such a course; a more direct decision adverse to the federal rights claimed, it is impossible for the mind to conceive. The claims of defendant went to the very foundation of the proceedings. The effect of the judgment is in startling contrast with the reasons assigned for it. To meet this position by the claim, that the federal rights were all maintained by the opinion, is to elevate fiction above fact.

Keeping in view, that if it is the *final judgment* of the state court, and not its *opinion*, which may be reviewed on writ of error, this Court will award to plaintiff in error the relief from such judgment to which it may be entitled; also that the opinion is not the judgment, but the reasons therefor; it is a case of singular hardship, where the error in the judgment brought up for review, is made conspicuous by the reasons assigned for it; if the federal right is denied by the reasons, but upheld by the judgment, the error of the opinion can not in the slightest degree impeach the judgment; if, on the other hand, as is the case here, the opinion is profuse in its recognition of every right set up under the Constitution of the United States, is followed by a judgment which denies all of them, the soundness of the opinion can not be called in aid of the judgment, full proof of the error in which, is demonstrated by the opinion. It has been held by the supreme court of Louisiana, that the reasons for a judgment, form no part of the judgment itself, although they may, with propriety, be consulted to explain an ambiguity; (Keene vs. Fisher, 10 La. An. Reports, p. 261); here, there is no ambiguity in the judgment to be explained by the reasons; the former is as clear in its denial of federal rights as the opinion is direct and positive in their recognition; the two are irreconcil-

ably inconsistent; they can not be made to harmonize; each is destructive of the other. The judgment of the state supreme court being sent down for execution to the district court, any attempt to distinguish the bonds sold under it, from all other constitutional bonds; any statement in the advertisement of sale that the bonds offered were subordinate and inferior to all other constitutional bonds, would be a clear violation of the judgment of the district court, which the supreme court affirmed. This judgment directs a literal compliance with article 317, which is to sell constitutional bonds, each one of which will be the peer of all other bonds of the same character; it would be in vain for the Board to rely upon the clearly expressed conditions and limitations placed upon the bonds by the supreme court's opinion, which in no respect diminishes the executory force of the judgment.

The rule prevailing in Louisiana upon this subject is well stated in Davidson vs. Carroll, 23 La. Annual Reports, page 108, as follows:

"The reasons given by the Court for judgment, form no part of the judgment itself, and the judge of the lower court, is not bound by any expression used by the supreme court outside of the decree." Again, in Chaffe vs. Morgan, 30 La. An. Rep., 1310, it was declared: "Reasons for judgment may and often do serve to interpret it and to explain any ambiguity, but it has been often and properly held that the thing adjudged will not be found in the opininion, but in the decree rendered." It is true that this is followed by the statement (page 1310) that the court, for fear of misapprehension, qualifies this rule to the extent, that where the opinion contains matter of instruction how to proceed on some point expressly ruled, it must be obeyed as the thing adjudged. The opinion here, however, contains no such instruction, either in express terms or by implication; on the contrary, adhering to the decree, necessarily involves the ignoring of

all the conditions found in the reasoning. The opinion, at most, is academic and entirely in the abstract, when placed alongside of the decree, which is at variance with every limitation announced in the reasons.

So wide is the separation of the judgment from the reasons assigned for it, that in State *ex rel.* Orleans Railroad Company vs. Judge, 35 La. An. Reps. 218-219, it was declared that the reasons do not form part of the judgment, and that the signature of the reasons is not the signature of the judgment.

If the proposition of the plaintiff in error, that there is a variance between the judgment and the reasons advanced in support of it be well founded, this case would come within the rule stated in Cucullu, Administrator, vs. Brackinridge Lumber Co., 48 La. An. Reps. 681, might be aptly applied. In this case, the Chief Justice, who is the author of the opinion in the present case, speaking of the judgment before the court, said: "As the present one (the judgment) is written, it obviously does not in its terms conform to the reasons assigned for judgment, and it leaves the rights of parties not clearly defined or fixed by it, but to be determined by implication and reasoning." On such ground the judgment of the lower court was reversed, and the case remanded to the judge of the district court to render another judgment. See page 681.

No resort, however, can be had to the reasons of a court in order to interpret its judgment, except where the terms of the judgment are of doubtful construction. Avery vs. Police Jury, 15 La. An. Rep. 224.

It would be impossible to conceive a judgment freer from doubt, and clearer or more explicit in terms, than the one in this case; what it means is apparent at a mere glance; its significance is as obvious as anything that can be expressed by language.

The difference between a judgment and the reasons for the same, so clearly pointed out by the jurisprudence of

Louisiana, is found in decisions rendered by courts of last resort in other states, whereby the opinion and the judgment are declared distinct things; thus, the supreme court of California, in Houston vs. Williams, 13 Cal., page 27, has said, touching its own judgments: "The terms 'opinions,' and 'decisions,' are often confounded, yet there is a wide difference between them, and in ignorance of this, or by overlooking it, what has been a mere revision of an opinion, has sometimes been regarded as a mutilation of the record. A decision of a court is its judgment; the opinion is the reasons given for that judgment. The former is entered of record immediately upon its rendition, and can only be changed by a regular application for a rehearing or a modification. The latter is the property of the judges, subject to their revision, correction and modification, in any particular, when deemed advisable. until with the approbation of the writer, it is inscribed in the record."

The point decided, and not the reasons given for it, is what is fixed by the judgment. Burke vs. Cable Co., etc., 12 Cal. 402.

The constitution of South Carolina required that every point made and distinctly stated in a cause, and fairly arising upon the record, should be considered and decided, and that the reasons therefor should be concisely and briefly stated in writing, and preserved among the records of the case. The supreme court of that state having this article before it in *Ex parte Dial*, 14 So. Car. Reps., 586, said: "In pursuance of this provision of the constitution, this court, in pronouncing judgment, either of reversal, affirmance or modification, has uniformly filed an opinion setting forth the reasons for the judgment, to be preserved among the records of the case, as required by this section. It is true that the final determination or judgment has been usually incorporated as a part or conclusion of the opinion, but it has never been

understood that any reason upon which the judgment was founded, constituted any part of the judgment itself. While the practice has been to embrace the two in the same paper, the one as the logical result of the other, yet they might be separate and contained in distinct papers."

Speaking of a case presenting features somewhat similar to the present one, the Court of Civil Appeals of Texas, stating the effect of declarations found in the opinion upon the judgment rendered, has said: "The language of the judge used in reasoning, in the opinion, or in stating the cause, is not any part of the judgment of the court, though it may be looked to in order to determine what had been adjudicated; and without entering into a consideration of the effect of a judgment which would undertake to reverse as to the plaintiff's cause of action and affirm as to the defendant's plea in reconvention, we think it is sufficient to say that, both parties being before the court, and the court without restriction having reversed the judgment of the court below, it stood reversed as to all issues." 4 Texas Civil Appeals Reports, 632.

On the Motion to Affirm.

The motion to dismiss, ~~was~~ accompanied by one to affirm, on the ground that the federal questions contested below were manifestly decided correctly.

It is apprehended that the argument of plaintiff in error on the motion to dismiss, has placed the court in possession of a knowledge of the case, more than sufficient to ensure its denial, of the motion to affirm; a restatement, however, of the points involved so far as applies to this motion, may be useful.

For this purpose, ~~that~~ it is deemed unnecessary to discuss *seriatim*, the numerous assignments of error, but that it is believed sufficient to note and discuss in the large, the errors complained of.

It was argued on behalf of relators in the lower court that the Board of Liquidation had no right to assail the validity of the constitution of Louisiana, and hence had no capacity to set up the federal rights claimed in the answer.

Upon the authority of Board of School Directors vs. City, 32 La. An. Reports 96, the state supreme court held this challenge of the board's authority to raise the issues mentioned, to be wholly unfounded. In rejecting the contention of relators upon this point, the court used the following language:

"A similar claim was advanced in Board of Public School Directors vs. the City of New Orleans (32 An. 96), and held by this court, to be not well founded."

"We adhere to that conclusion and adopt as correct, the reasons assigned by the court for reaching it."

"It by no manner of means follows, that a board which owes its existence to statute authority, and has its powers and duties defined thereby, is necessarily under a continuing liability to have its future conduct and its future duties, controlled by the same authority."

"There are doubtless cases where this power of control continues absolutely, but there are others where, though it may be continued, it is under limitations; and others again when it ceases altogether."

"This question has to be determined in each case by the nature and character of the duties cast upon the board; the rights of third parties which may have resulted from an acceptance of the trust, and the duty and liability of the board itself and its members, as resulting from the same fact."

"In the case just referred to the court said: 'It would be passing strange if after the defendants have been commanded to show cause why the relief sought against them should not be granted, they could be met when they appear in response, that they have no standing in court'

(11 Wal. 267; 17 An. 251; 39 An. 11). The Court did not hold in 41 An. 156 that they did not possess the right of *pleading* its unconstitutionality and that they must *not be heard*."

Another contention made by relators in the lower court was, in effect, that no one entitled to share in the one per cent. tax could lawfully object to any purpose for which constitutional bonds might be employed, so long as their issue was not in excess of the ten millions authorized by the amendment of 1892 and the act of 1890; that they might be interested that the limit of the amount of the bonds should not be passed, but before this, were without interest as to who should be the holders of the bonds sharing in the fund with them, and in support of their position upon this branch of the case relators relied upon Board of Liquidation vs. McComb, 92 U. S. 531; and this argument was addressed more particularly to that part of defendant's complaint which denied the constitutional right to diminish the surplus, set apart for permanent public improvements under sections 8 and 10 of the act of 1890, and for the payment of the bonds issued and contracts made by the Drainage Commission under acts 114 of 1896 and 63 of 1898.

This contention of relators was disposed of by the supreme court of the state, in the following language:

"We do not take the same view that relators do, as to what was meant by and intended to be conveyed, by the 'surplus' referred to by act 110 of 1890, act 114 of 1896, and the constitutional amendment of 1892. We think the lawmakers intended that any portion of the one per cent. tax provided for in act 110, not needed for the payment or retirement of the particular bonds or claims therein specially provided for, as to payment or retirement, should constitute the surplus of the tax, and that it was not contemplated when the tax was passed or the amendment of 1892 adopted, that in order to exhaust

any portion of the ten millions of dollars originally expected to be needed to pay the existing bonds and the existing claims therein specially enumerated, which might not be necessary thereafter, new classes of claims should and would be thrown under the provisions of the funding law."

"We think the 'surplus,' was intended to connect at once, and follow immediately behind, as to its appropriation, the amount beyond that actually needed to carry out the plan, as originally mapped and planned. The surplus was provisionally ascertained each year, in a manner particularly specified, to be readjusted the next, in a manner also particularly specified; all the surroundings and circumstances connected with the legislation negative the idea that the surplus mentioned was to be, only any surplus over $10,000,000, which might be the result from the collection of the 1 per cent. tax.

"We think the Board of Liquidation, the Drainage Commissioners, and those with whom they contracted, were justified in placing that interpretation upon the legislation, and that contract rights based upon the same should be protected from impairment. The convention while ordering the payment of the certificates held by the relators, through sales of consolidated (constitutional) bonds, could not confer upon the holders of such bonds, rights which in any way would come in competition with the contract rights of creditors, existing against the tax at the time of the adoption of the Constitution. Though there was no mention in the Constitution as to the rank of the bonds which would be issued to take up relator's certificates, that rank resulted from legally existing conditions, which could not be constitutionally interfered with. There is no constitutional objection to the convention's ordering the Board of Liquidation to sell bonds to take up the relator's certificates, but there would be constitutional objection to be urged, if the effect of the

issuing of such bonds would be to place the holders thereof on an equality with the holders of bonds issued to take up the bonds and claims provided for, as to their funding and payment by Act No. 110 of 1890, Act No. 114 of 1896 and the constitutional amendment of 1892."

It is assumed by plaintiff in error, that the declarations of the supreme court of Louisiana, first, upon the right of the Board of Liquidation to raise the issues presented by the answer; and second, the right to check the use of the constitutional bonds for purposes not authorized by the amendment of 1892 and the acts of 1890, will be accepted as conclusive by this Court, since these are the constructions placed by the highest court of Louisiana upon a statute of that state, and are entirely apart from any federal question involved.

The right *vel non* of the board to raise the defences found in its answer, is to be determined by an interpretation of the acts of the General Assembly of Louisiana, No. 130 of 1880, No. 110 of 1890, and the constitutional amendment of 1892, all local statutes.

What were the rights of the holders of constitutional bonds, contractors of the city for permanent public improvements, contractors for the Drainage Commission and the bonds issued by it, are questions governed by the state statutes upon which they are founded, and the finding of the supreme court of the state upon these issues should be accepted as binding, by this Court.

Rev. Statutes of the U. S., Sec. 721.
Bausermann vs. Blunt, 147 U. S. 652.
Balkin vs. Woodstock Iron Co., 154 U. S. 187.
County of Leavenworth vs. Barnes, 94 U. S. 71.
Stone vs. Wisconsin, 94 U. S. 183.
Lloyd vs. Fulton, 94 U. S. 479.
South Branch Lumber Co. vs. Ott, 142 U. S. 622.

There is no inconsistency in plaintiff in error calling in

aid these findings of the supreme court of the state, to the judgment of which, this writ of error is taken; it is the *decree* or *judgment* of the supreme court of Louisiana, and *not its opinion*, which is brought here for review; to the opinion, or reasons, by which the judgment is reached, plaintiff in error finds no objection, since it recognizes and sustains every ground of defence set up in the answer; the judgment of the court, however, is in painful contrast with the opinion; the former denies all the federal rights relied upon and pleaded by the defendant, while the latter recognizes them; it is remarkable that the reasoning of the court in its opinion, tending irresistibly to a conclusion favorable to the defendant in error, on every branch of this case, is followed by a judgment denying defendant in error all that is awarded to it by the opinion, and the very reverse of what is clearly demonstrated by the court's reasoning.

As a matter of fact, this case presents the odd circumstance of a judgment which denies to the defendant rights founded on the Constitution of the United States, to which the opinion, at great length, declares it is entitled; the well grounded character of plaintiff in error's attack on the judgment of the supreme court of Louisiana is fully sustained by its opinion, which by law must set out the reasons upon which the judgment was founded.

It is insisted by defendants in error, that the case of the Board of Liquidation vs. McComb, 92 U. S. 531, is decisive of the present controversy, and that the application here of the doctrine of that case, is fatal to the defendant.

An examination of the McComb case itself, as well as a comparison of the statute therein discussed, with the one presently involved, will disclose that its asserted potency is entirely lacking.

The act under consideration in the McComb case was No. 3 of 1874, by the first section of which, the state funding board thereby created, was authorized to prepare and

issue bonds to be known as consolidated bonds of the state of Louisiana, to the amount of $15,000,000; by section 3, these were to be exchanged by the board for all valid outstanding bonds of the state, and all valid warrants drawn previous to the passing of the act, at the rate of sixty cents in consolidated bonds for one dollar in outstanding bonds and warrants; by Sec. 5 it was declared that the consolidated bonds should be used for no other purpose than as authorized by the act.

It will be noted that the statute made no dedication of the surplus of the tax, after paying the fixed annual charges, for any purpose, separate and apart from the bonds; any surplus remaining in any year, after the payment of the annual interest, was appropriated for the retirement and purchase of consolidated bonds; it is entirely correct to say that the entire tax, including the surplus, was set apart for the bonds; and hence, the argument that a bondholder could not complain, if the total authorized issue was not exceeded, could be well made; here however, the surplus under the constitutional amendment and the act of 189c, is not devoted to the retirement of constitutional bonds, but is appropriated to purposes entirely different, viz.: for the support of public schools, and the making of public improvements; any person, therefore, entitled to be paid out of the surplus, would have standing to resist any encroachment thereon, and to restrict the fixed annual charges against the tax to those enumerated in the act of 1890, which is his contract; under the act of 1874, the surplus remaining after the payment of the annual interest, like the tax itself, was destined to support the bonds and nothing else; the tax was devoted first to the payment of interest on the bonds, and then the surplus to their retirement.

The appropriation of the surplus of the one per cent. tax levied by the constitutional amendment of 1892, and

the act of 1890, is as completely appropriated and dedicated to specific purposes, as any part of the tax necessary to carry out any other purposes of both; under section 8 of the act, there is no part of the surplus which is at large, or unappropriated, or available for any purpose, beyond those expressly designated; the surplus, whatever it may be, is devoted one half for the support and maintenance of the public schools, and the other one half, to the construction of works of permanent public improvement; the one half of the surplus set apart for public schools, by the concluding clause of article 254 of the constitution of 1898 is removed from any effect of article 317 of that instrument, by the provision, that the "schools shall also continue to receive from the Board of Liquidation of the City Debt, the amounts to which they are now entitled under the constitutional amendment adopted in the year 1892"; construing articles 254 and 317 so as to give effect to both, the preservation by the former of the school half of the surplus from any encroachment, would confine the effect of article 317 to the one half the surplus dedicated to public improvements, so far as concerns any diminution, as a consequence of imposing upon the tax the principal and interest of the bonds to be issued by article 317.

By section 10 of the act of 1890, the permanent public improvement fund, consisting of the one-half of the surplus already spoken of, was specially dedicated and set apart for the construction of permaneut public improvements in the city of New Orleans, such as levees, canals, drainage, stations and other works of that character. It is shown by the record, page ——, that at the time this case was tried in the court of first instance, there were outstanding and unpaid, contracts for works of permanent public improvement amounting to $————; there can be no doubt that the sums thus due, are charges which outrank, and must be paid out of the fund in question, before any

disposition of the same can be made for any other purpose, and to the extent that article 317 would impose a new charge upon the mass of the tax, and thus reduce the surplus, would be to impair the obligations of all contracts made under the authority of section 10.

In 1896, by section 3 of act of the General Assembly No. 114 of that year, the permanent public improvement fund was withdrawn from the general purpose set out in section 10 of the act of 1890, and dedicated to the specific public improvement of the drainage of the city of New Orleans; the act further took the administration and control of the fund away from the Council of the city of New Orleans and the Board of Liquidation of the City Debt, and confided it to the Drainage Commission, which it created to carry out the drainage scheme ordained by the statute; against this fund, along with one other source of revenue, the Drainage Commission was authorized to issue bonds to the extent of $5,000,000; and by section 7, it is declared that all the provisions of the act respecting the dedication and application of funds and money, constituted a contract with the holder or holders of the bonds, the obligation of which contract should not be impaired, and which could be enforced by any holder of the bonds, by proceedings of mandamus and injunction, or by other proper proceedings in court. By section 6 of act No. 63 of 1898, that of 1896 was amended so as to reduce the authorized bond issue from $5,000,000 to $1,500,000, and by section 7 thereof, all the guarantees which by section 7 of the first act surrounded the bonds issued by the Commission, were extended to all contracts which it made.

It will be thus seen that while under the state funding act of 1874, no provision was made for any surplus of the tax thereby authorized, over and above the amount necessary each year to carry the consolidated bonds actually issued, to any purpose extraneous to and inde-

pendent of, the bonds themselves, here, however, the surplus destined to purposes apart from the bonds, commences at once to accumulate after the actual bond issue is provided for, and immediately becomes subject to all contract rights acquired upon it; these are those resulting from contracts for permanent public improvements made under section 10 of the act of 1890, and the bonds issued, and contracts made by the Drainage Commission; under section 8, there is no hiatus between the payment of the fixed annual charges against the tax, and the remaining surplus; this, from the moment it begins to accumulate, belongs to the owners of the contracts or holders of bonds mentioned.

This is not only clear from the text of the act of 1890 itself, but the opinion of the supreme court of Louisiana in this case, has so declared; it was contended by defendants in error in that that court, that undert he statute the accumulating surplus did not arise until after the maximum limit of ten million of constitutional bonds had been reached; and that the surplus intended by the act, was that which would afterwards remain; that is, after provision had been made for this extreme amount; the supreme court of Louisiana disposed of this argument, in the following language:

"We do not take the same view that relators do, as to what was meant by, and intended to be conveyed by the 'surplus,' referred to by Act 110 of 1890, Act No. 114 of 1696, and the Constitutional Amendment of 1892. We think the lawmakers intended that any portion of the 1 per cent. tax provided for in Act 110, not needed for the payment or retiring of the particular bonds or claims therein specially provided for, as to payment or retirement, constituted the surplus of the tax, and that it was not contemplated when the tax was passed or the amendment of 1890 adopted, that in order to exhaust any portion of the ten million of dollars originally expected to be

needed to pay the existing bonds, and the existing claims therein specially enumerated, which might not be necessary thereafter, new class of claims should or could be thrown under the provisions of the funding law.

"We think the surplus was intended to connect at once, and follow immediately behind as to its appropriation, the amount beyond that actually needed to carry out the plan as originally mapped out and planned; the surplus was provisionally ascertained each year, in a manner particularly specified, to be readjusted the next, in a manner also particularly specified; all the surroundings and circumstances connected with the legislation negatived the idea, that the surplus mentioned was to be only, any surplus over ten million dollars, which might be the result from the collection of the one per cent tax.

"We think the Board of Liquidation and Drainage Commission, and those with whom they contracted, were justified in placing that interpretation upon the legislation, and that contract rights based upon the same should be protected from impairment."

Contractors under section 10 of the act of 1890, contractors of the Drainage Commission, and the holders of its bonds, who are given by law the surplus as one source of their payment, could raise valid objection to any proceedings, by which the surplus would be lessened or contracted, as by imposing upon the one per cent. tax, the surplus of which is that in question, the burden of the bonds directed to be issued by article 317 of the Constitution, a charge not included in, but fixed by legislation subsequent to the act of 1890.

The importance of the circumstance, that while the surplus arising under the act of 1874 is not disposed of for any purpose independent of the bonds thereby authorized, while here there is a complete setting apart and dedication of the surplus under act of 1890, for other purposes, destroys the supposed analogy between the two

statutes, claimed to the advantage of defendants in error.

Coming, however, to the McComb case, it may be premised, before its critical examination, that it is authority in support of, and not against plaintiff in error, upon this branch of the case.

McComb, a holder of consolidated bonds, which he had received in exchange for obligations surrendered, under the act of 1874, sought by injunction to prevent the funding board from issuing to the Louisiana Levee Company consolidated bonds for a class of indebtedness which was not enumerated in the act of 1874, among the obligations for which consolidated bonds could be received; this on the ground that his own consolidated bonds would be injured by the issuance of others, to take up an indebtedness which they were not designed to retire. The decree of the Court, 92 U. S. 541, was an affirmance of that of the circuit court in favor of McComb, so far as it prohibited the funding of the debt due the Levee Company into consolidated bonds issued or to be issued, under the funding act of 1874, but reversed as to so much thereof as prohibited the issue of any other bonds to the Levee Company in liquidation of its affairs. This was a clear declaration of the right of McComb to exclude from participation in the scheme, any indebtedness which was not authorized or provided by the funding act itself. It is precisely such relief, differently applied, that is sought here by plaintiff in error; that is, to exclude from the benefits of the act of 1890 an indebtedness not named in that statute, and which came into existence as a debt of the city, by its voluntary assumption, many years afterward.

An examination of the McComb case shows that the decree of the circuit court awarded a perpetual injunction restraining the Board of Liquidation from using consolidated bonds in the retirement of a certain debt claimed to be due the Levee Company, and also from issuing any other state bonds in payment of the asserted debt. The

bill filed by McComb alleged that he was the holder of consolidated bonds, and that the employment of these bonds for the purpose proposed would be a violation of the pledge given by the act creating the bonds, and would greatly depreciate their value. This Court in its opinion set out the provisions of the act of 1874 and explained its purpose. It appears that in the year 1875, the year subsequent to the adoption of the funding act, the legislature authorized the board to issue consolidated bonds provided by the former, to pay the debt due the Louisiana Levee Company; but this debt was not one of the debts for the settlement of which consolidated bonds had been created; it was not represented by outstanding bonds of the state, or by valid warrants of the state auditor; complainant in his bill further contended that it was not a state debt at all, being provided for by the special taxes appropriated for its payment. Another objection was that the act of 1875 proposed to pay the Levee Company's debt in full, while the funding act authorized the payment of only sixty cents on the dollar. It was insisted that the act of 1875, anthorizing the appropriation of consolidated bonds for the payment of the levee debt, disfigured the scheme and impaired the validity of the contract, made with those who accepted the bonds according to the terms of the funding act, and was therefore void. See 92 U. S., pages 534 and 535.

After considering a contention of the appellee, that to pay the levee debt as contemplated, would be to increase the state debt in violation of the act of 1874, and the constitutional amendment in confirmation thereof, the court reached the conclusion that the argument of the appellee on this point was not well founded; the court said; (ditto, page 537);

"The question, however, remains, whether even supposing the levee debt to be a valid one, it can lawfully be funded into consolidated bonds in view of the other stipu-

lations of the funding act"; the principal of which the court states to be the following:

First—That the consolidated bonds should not exceed an amount of fifteen millions, or so much thereof as might be necessary, that is, necessary for the purpose of consolidating the debt of the state at sixty cents on the dollar.

Second—That they could only be used in exchange for the floating and bonded debt designated in the act, which did not embrace the levee debt in question; and that such exchange shall be at the rate of sixty cents in consolidated bonds for one dollar in outstanding bonds and warrants.

Third—That a tax of five and one-half mills on the dollar of the assessed value of all real and personal property should be annually levied and collected for the purpose of paying the interest on the bonds and should be set apart for that purpose and no other. Any surplus beyond paying interest to be used for the purchase and redemption of the bonds.

Fourth—That the power of the judiciary by means of mandamus, injunction and criminal proceedings, should be exhausted to carry out the provisions of the act.

The violation of these stipulations by the proposed funding of the levee debt, insisted upon by the plaintiff, were three, only two of which are pertinent to the present discussion; they are, the first, that the entire issue of bonds would be increased by the amount of indebtedness, thereby diminishing the relative superiority provided for each bond; and the third, that the benefits of the scheme provided by the funding act would be lost, by the violation described, and all the advantages anticipated by the complainant and others in surrendering their original debts, would fail.

Discussing these points, as to the first, the Court said (f. 538), that there was no pretence that the Funding Board proposed to issue consolidated bonds in excess of the expressed and limited amount of $15,000,000; but

while the payment of the levee debt by consolidated bonds might exclude obligations actually entitled to share in the scheme, it would not increase the total number of consolidated bonds; that complainant could not contend that he had a right to prevent the state from using bonds for funding its other debts, if those for which they were intended should not be surrended; that plaintiff could not obtain any advantage by the failure of some of the designated creditors not coming in; that he could not be injured if the amount of bonds ultimately issued did not exceed $15,000,000; that he consented, when he took his bonds, that there might be $15,000,000 of them issued; that he could not justly complain if that amount was not exceeded, even if the debts funded thereby were not precisely those specified in the act, provided the material terms of the act were complied with. (p. 539).

The court then finds, that the proposed funding of the debt was not in accordance with the act of 1874, which proposed the issue of consolidated bonds to the extent of sixty cents on the dollar, of the obligations to be retired.

While the reasoning of the Court found on pages 538 and 539, which terminates with the conclusion, that the plaintiff would have great difficulty in maintaining a bill in equity, which enjoined the substitution of one debt for another in the participation of the benefits of the funding act, the decree, which is paramount to the reasoning, *excludes the Levee Company from any participation at all in the funding scheme*, and perpetuates the injunction, which prohibited the funding of the levee debt in consolidated bonds, under any conditions whatever.

If, as a matter of fact, the only obstacle which the Court found, to the funding of the levee debt, was the fact that it was to be funded at par, and not at sixty cents on the dollar, the obvious and necessary result would have been, a decree which would have perpetuated the injunc-

tion of the circuit court, so far as it prevented the funding of the levee debt at par, and which would have set it aside, or modified it, so far as to allow the Levee Company to receive consolidated bonds at the rate of sixty cents on the dollar, for each dollar of its debt for which they were to be exchanged.

The authority of the McComb case, like in other cases, is to be found in the adjudication upon the issue between the parties, and not in its reasoning, *arguendo*, upon which its opinion proceeds; if the thought in the Court's mind was, that McComb could make no valid objection to the funding of the levee debt, on the ground that he sustained no injury by the authorized issue of $15,000,000 of consolidated bonds, no matter for what purposes, even in part, for an indebtedness which the act of 1874 did not intend they should retire, the decree of the Court would necessarily have been, not a perpetuation of an injunction which prohibited the Levee Company from receiving any consolidated bonds at all, but one ordering the funding of the levee debt at sixty cents on the dollar.

The doctrine of the McComb case has been stated by this Court in decisions subsequent thereto, and declarations by which high and unquestionable authority furnishes a most reliable guide to what the import of the decision really is, and what the Court intended. For instance, in Louisiana vs. Jumel, 107 U. S. 725, this Court, through Chief Justice Waite, who presided and took part at the hearing of the decision of the McComb case, declares:

"The Board of Liquidation vs. McComb, 92 U. S. 531, arose under the same act of 1874, which we are now considering. The board was there enjoined, at the instance of a bondholder, from admitting to the privileges of the compromise proposed by the state, certain persons other than those originally provided for, and on different terms. And this clearly because the board was, by

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the very terms of the law, charged with the duty of exchanging the bonds specifically set apart by the contract for a particular purpose, and every *bona fide* bondholder, by accepting the compromise offered, became personally interested in securing the due administration of the trust, which had thus been given to the board. In fact the board held the new issue of bonds in trust, and every one who gave up his old obligations and accepted the new became a beneficiary under the trust, and might act accordingly."

Again, in Cunningham vs. Macon & Brunswick R. R. Co., 109 U. S. 454, the organ of the Court being Mr. Justice Miller, who likewise had a part in the decision of the McComb case, declared:

"The case of the Board of Liquidation vs. McComb, 92 U. S. 531, is to the same effect. The Board of Liquidation was charged by the state of Louisiana with certain duties in regard to issuing new bonds of the state in place of old ones which might be surrendered in exchange by the holders of the latter. The amount of new bonds to be issued was limited by constitutional provision. McComb, the owner of some of the new bonds, filed his bill to restrain the board from issuing that class of bond for an indebtedness not included in the purpose of the statute, on the ground that his own bonds would thus be rendered less valuable. The court affirmed the decree of the circuit court enjoining the board from exceeding its power in taking up with a new issue a class of state indebtedness not within the provisions of the law on that subject."

While it is true that this language was used with reference to the question whether or not in the case decided in this suit was against the state, the particularity with which the learned justice states the issues and quotes the decree in the McComb case, is undoubted evidence of his and the court's understanding of the controlling issue and the scope of the decree in the McComb case.

If the execution of article 317 of the State Constitution will in any respect trench upon the rights arising under the legislative contracts created prior thereto, it is stricken with nullity; one of the tests whether or not a contract has been impaired is, that its value has been diminished by legislation; it is not by the constitution to be impaired at all; this is not a question of degree, or manner, or cause, but of encroaching in any respect upon its obligation, or of dispensing of any part of its force.

Planters' Bank vs. Sharp, 6 How. 327.

The obligation of a contract is the law which binds the parties to perform their agreement; the prohibition has no reference to the degree of impairment—the largest and the least are alike forbidden.

Von Hoffman vs. City of Quincy, 4 Wallace, 552.

The objection to a law, on the ground of its impairing the obligation of a contract, can never depend upon the extent of the change which affects it.

Green vs. Biddle, 8 Wheaton, 84.

Section 2 of the constitutional amendment of 1892, which authorized the city to examine into and assume the payment of claims and obligations of the School Board for the years 1880 to 1894, inclusive, plays no part in the determination of this case. Relators' suit is not founded upon any assumption that the city made under Section 2, but solely upon Article 315 of the Constitution of 1898. It appears from the record that the city had, prior to the adoption of the Constitution of 1898, under the authority granted by Section 2, assumed the payment of the school debts of certain years therein named, and that these were being provided for by appropriations made by the city of New Orleans, not out of the 1 per cent. bond tax, but out of that levied for general municipal purposes. It was not intended that any assumption made by the city under Section 2 of the constitutional amendment should be discharged out of the one per cent. tax thereby authorized.

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If there were any doubt of this it would be solved by the construction that the city and the owners of the claims assumed have placed upon Sec. 2. This was the provision by the city for the payment of the assumed school debts, out of its general revenue, and not out of the one per cent. tax.

This fact was known and recognized by article 313 of the constitution of 1898, which in propounding a scheme for the funding and retirement of the city's floating debt incurred between 1879 and 1885, inclusive, especially excepted therefrom the school claims which had been assumed by the city under section 2 of the constitutional amendment of 1892.

It is hardly necessary to say that relators' claims are not in any event payable out of the one half of the surplus, which by section 10 of the act of 1890, is received by the School Board for the support and maintenance of public schools. There is, in fact, no claim here that it is so payable. The surplus was intended for the future support and maintenance of the schools, from the time that the amendment of 1892 went into effect. Relators' claims against the School Board, which have been assumed by the city under Article 315 of the Constitution of 1898, were incurred at the latest in 1887, five years prior to the time the amendment went into effect.

In Fisher vs. Board, 49 La. An. Rep. 1077, there was under consideration Act No. 136 of 1894, by which it was attempted to use the school surplus for the payment of school debts contracted many years prior to the date of the amendment. On the theory that the surplus which, under paragraph 2 of the amendment, was at the disposition of the Legislature, could by the latter be disposed of for a subsequent and different purpose from that prescribed by section 8 of act 110 of 1890. It was held, however, that the power of disposition given by the amendment was exhausted when once exercised, after

which it became a vested right of the School Board which could not be disturbed by subsequent legislation.

See also U. S. vs. Board of Liquidation, 75 Fed. Rep. 543.

It will be borne in mind that the School Board is a political body separate and independent from the city of New Orleans, and also from the Board of Liquidation; and the city could not become the debtor of its obligations save by assumption legally and constitutionally authorized.

See acts 36 of 1873 and 123 of 1874; Tisher vs. School Board, 44 La. An. Rep. 186.

The court will note that throughout the opinion of the state supreme court there is repeated mention of "consolidated" bonds; where the items "constitutional" was the one intended. This is either a clerical error, or an inadvertence of the Honorable Chief Justice; the term intended to be used was evidently constitutional bonds.

Respectfully submitted,

BRANCH K. MILLER,

Attorney Board of Liquidation of the City Debt, Plaintiff in Error.

August, 1899.

ASSIGNMENT OF ERRORS.

First—That by Sec. 1, of the amendment to the Constitution of the State of Louisiana proposed by Act 110, of the General Assembly of said State, which proposal was approved July 6, 1890, and which said amendment was adopted by a majority vote of the qualified electors of said State at the general election held therein April, 1892, it is provided that the 4 per cent. constitutional bonds of the city of New Orleans thereby authorized, shall be for the purpose of retiring the then valid outstanding bonds of the City of New Orleans, and to retire judgments then, or thereafter, rendered against the said city, on floating debt claims prior to 1879, entitled to be funded under Act No. 67 of the General Assembly of the State of Louisiana of 1884; that by Sec. 3, of Act No. 36 of the General Assembly of 1890, otherwise known as Act No. 110 of that year, it is provided that all funds received by the Board of Liquidation of the City Debt, defendant herein, shall be deposited with the fiscal agent of the City of New Orleans, or if the same be deemed not satisfactory by the said Board, with a chartered depositary selected by the same to the credit of a special fund, called the "Bond Sales Fund," which fund, by said section, it is declared, shall be used solely and exclusively for the purpose of retiring, by payment, all of the then outstanding valid bonds of the City of New Orleans, matured or subject to call; and the payment of judgments then, or thereafter, rendered on floating debt claims, prior to 1879, entitled to be funded under Act No. 67 of 1884.

That the purposes for which said bonds were authorized by said amendment, are exclusive of all others; and there is no authority in law for their issuance for any other purpose, or purposes, than those named in the said

amendment; that by the terms of Section 3, of said act 36, (or 110), of 1890, the proceeds of the sale of said four per cent. constitutional bonds, are set apart and dedicated solely and exclusively to the purposes therein named.

That Article 317, of the Constitution of the state of Louisiana, adopted in 1898, which directs the Board of Liquidation to sell a sufficient number of said constitutional bonds to pay certain obligations of the Board of School Directors of the public schools of the Parish of Orleans, for unpaid salaries of school teachers, portresses, and all other legitimate claims against said School Board, for the years 1882, 1883, 1884, 1885, 1886 and 1887, under the conditions named in article 315 of the said Constitution of the state of Louisiana, so far as the same might be assumed by the city of New Orleans, after its examination of said claims, as directed by said article, directs the issuance and sale of said constitutional bonds for purposes not designated by said constitutional amendment, and by said act No. 36, (or 110) of 1890, by reason of which it is an impairment of the contracts, and the rights therefrom arising, created by said constitutional amendment, and the said act.

That the contracts so violated are those in favor of the holders of all outstanding premium bonds issued by the City of New Orleans; all constitutional bonds issued, or to be lawfully issued, under the authority of said amendment and the said act; those of all contractors, who, up to the time the said Constitution of 1898 went into effect, to-wit: May 1st, 1898, had constructed works of permanent public improvement under contracts with the City of New Orleans, payable out of the surplus of the one per cent. tax authorized by the said amendment and the said act, which said surplus was established and is fully described in sections 8 and 10, of said act; all contracts made by the Drainage Commission, for drainage works,

and all bonds issued by it, under the acts of the General Assembly of the State of Louisiana, No. 114 of 1896, and No. 63 of 1898, which by the last mentioned acts, are payable out of the "Permanent Public Improvement Fund," composed of one half of the said surplus of the said one per cent. tax, established and described by sections 8 and 10 of the said act No. 36, (or 110) of 1890; which said fund by said acts No. 114 of 1896, and No. 63 of 1898, is specially set apart and dedicated to the payment and discharge of all said contracts made, and of all said bonds issued by the said Drainage Commission.

That said acts further provide that all their provisions respecting the dedication and application of funds or moneys, shall constitute a contract with the holder or holders of said bonds, and with each and every person or corporation which may have entered into contracts with the said Drainage Commission, and expressly forbid any impairment of the same.

That the judgment, or decree of the Supreme Court of the State of Louisiana, which directs the execution by this defendant, of said Article 317 of the Constitution of the State of Louisiana, of 1898, by the sale of a sufficient number of said four per cent. constitutional bonds, to pay and retire the obligations of the Board of School Directors for the Parish of Orleans, which have been approved and assumed by the City of New Orleans under Article 315 of said constitution, impairs the obligations of the contracts created by said acts No. 36, (or 110) of 1890, No. 114 of 1806, and No. 63 of 1898; and that the said article No. 317 of the said Constitution, of itself, and as interpreted by the Supreme Court of the State of Louisiana in this cause, and as the said court, by its final judgment or decree herein has directed its execution and enforcement, is an impairment of the obligations of said contracts, and deprives all persons holding rights under the same, of their property without due process of law, all in

violation of Section 10 of Article 1, and the fourteenth amendment of the constitution of the United States.

Second—That by the terms of the said constitutional amendment, and the said act No. 36 (or 110) of 1890, the payment of the yearly allotments and premiums of the premium bonds of the City of New Orleans, and all charges and expenses for the carrying of the premium bond plan of the City of New Orleans, are to be paid out of the 1 per cent. tax, authorized by the said constitutional amendment and levied by the said act; that no person has any right to participate in, nor can any bond or contract be made payable out of the said 1 per cent. tax, or any part thereof, save those expressly mentioned and so permitted by the said constitutional amendment, and the said act; and it is the contract right of any person so entitled to receive any portion of said 1 per cent. tax, to exclude from participation therein any person or contract not so permitted or entitled, under the terms of said constiutional amendment and said act; that Article 317 of the constitution of the state of Louisiana, adopted in 1898, and the effect given same by the final judgment and decree of the Supreme Court of the state of Louisiana, in this case, necessarily impairs the obligation of the contract with all holders of premium bonds created and evidenced by said constitutional amendment and said act, by fixing as a charge upon the said 1 per cent. tax, the principal of and interest upon, the 4 per cent. constitutional bonds which this defendant is directed to issue and sell by said Article 317; and also necessarily deprives all holders of said premium bonds of their property without due process of law; all in violation of section 10, article 1, and the fourteenth amendment to the Constitution of the United States.

Third—That by the terms of the said constitutional amendment and the said act No. 36 (or 110) of the General Assembly of the State of Louisiana of 1890, there is

no warrant or authority of law to issue and sell four per cent. constitutional bonds of the City of New Orleans, for any purposes other than those set out and enumerated in the same, to-wit: to pay and retire all the then outstanding valid bonds, premium bonds excepted, of the City of New Orleans, matured, maturing, or subject to call, to pay judgments rendered against the City of New Orleans for floating debt claims arising prior to 1879, entitled to be funded under Act No. 67 of 1884; that it is a contract right of all holders of said constitutional bonds under said constitutional amendment and said act No. 36 (or 110) of 1890, to prevent the issuance and sale of said constitutional bonds for any purposes not mentioned in said constitutional amendment, and likewise to prevent any act or proceeding by which the burdens on said 1 per cent. tax are to be increased, or charges created against the same, not mentioned or authorized by said constitutional amendment and said act.

That said article 317, of the constitution of the State of Louisiana of 1898, and effect given by the final judgment or decree of the Supreme Court of the State of Louisiana in this case, is to impair the contracts in favor of all holders of said constitutional bonds, created and evidenced by the said constitutional amendment and the said act.

Fourth—That all persons who made contracts with the City of New Orleans and executed the same for the construction of works of permanent public improvement, the prices of which are payable out of the surplus of the one per cent tax authorized by the said constitutional amendment and levied by said act No. 36 (or 110) of 1890, one-half of which surplus, by sections 8 and 10 of said act, being specially dedicated to the payment and discharge of said contracts are entitled to exclude from participation in any portion of said one per cent. tax, any and all persons not entitled to participate therein by the said constitutional amendment and the said act; since any addition to the

burden of said tax imposed by said amendment and said act, will correspondingly diminish the surplus remaining after payment of the annual charges fixed thereon by said amendment and the said act, and thus impair the obligations of the said contracts; that said article 317 of the constitution of the State of Louisiana of 1898, and the effect given to it by the final judgment or decree of the Supreme Court of the State of Louisiana in this case, is to impair the contracts in favor of all holders and owners of said contracts.

Fifth—That the obligations of all contracts made by the Drainage Commission, and all bonds issued by it and sold under the aforesaid acts of 1896 and 1898 which are payable out of the Permanent Public Improvement Fund, composed of one-half of the surplus described in paragraph 4 in this assignment, are in like manner impaired by said article 317 of the state constitution of 1898, and the effect given to it by the final judgment or decree in this case; the impairment of such obligations being the same in all particulars, as that set up in paragraph 4, of this assignment, as concern all contracts for permanent public improvements made with the City of New Orleans, and payable out of the surplus of the said one per cent. tax, established and described in sections 8 and 10 of said act No. 36 (or 110), of 1890; the addition of the charge for principal and interest on the constitutional bonds which are directed to be sold by said article 317 of the Constitution of the State of Louisiana of 1898, effecting a diminution of the said surplus out of which it is the sole and exclusive right of contractors with the said Drainage Commission and the holders of its bonds, to be paid.

That said Art. 317, of said constitution, and the effect given to it by the final judgment or decree of the Supreme Court of the State of Louisiana, in this case is an impairment of the obligations of the contract of said contractors

and the holders of said bonds of the said Drainage Commission.

That said Art. 317 of the constitution of the State of Louisiana, of 1898 and the effect given to it by the final judgment or decree of the Supreme Court of the State of Louisiana, in this cause, impairs the obligation of all the bonds and contracts heretofore set out, mentioned and described and deprives the holders and owners thereof, of their property without due process of law; in violation of Sec. 10, Art. 1, and the fourteenth amendment of the United States.

The Supreme Court of the State of Louisiana erred in giving such effect, or any effect at all, to said Art. 317; and it further erred in not rejecting the demands of the relators, and dismissing their suit on these grounds; that the errors in this said final judgment and decree, and the proceedings anterior thereto, are those specially set out and enumerated above, and they entitle defendant to a reversal of said final judgment or decree of the Supreme Court of the State of Louisiana, and the rejection by this court of relators' demands.

No. 369, 114.

Opp. to Brf. of Miller & Lee & P. C. (mo

Supreme Court U. S.
OCT 30 1899
JAMES H. McKENNEY,
Clerk

Filed Oct. 30, 1899.

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COPIES ARTICLES OF THE CONSTITUTION

AND

ACTS OF THE LEGISLATURE OF LOUISIANA,

REFERRED TO IN BRIEF OF THE BOARD OF LIQUIDATION OF THE CITY DEBT.

PLAINTIFF IN ERROR.

COPIES ARTICLES OF THE CONSTITUTION

AND

ACTS OF THE LEGISLATURE OF LOUISIANA,

REFERRED TO IN BRIEF OF THE BOARD OF LIQUIDATION OF THE CITY DEBT.

PLAINTIFF IN ERROR.

ACT 36 OF 1873.

No. 36.] AN ACT

To provide Additional Regulations for the Board of School Directors of the city of New Orleans; to provide a Permanent Revenue for said Schools; to prevent Litigation against the School Fund; to Fund the School Debt; to Regulate the Employment of Teachers, and to direct the Council of the city of New Orleans to levy a School Tax, and perform other duties in connection with the Public Schools.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That the Board of School Directors for the city of New Orleans shall be in future composed of twenty directors, to-wit: one from each representative district, as at present constituted, and one additional director for each municipal district, the Administrator of Finance of the city of New Orleans, who shall be *ex officio* a member, and the superintendent of the sixth division, who shall be *ex officio* a member, with the right to speak but not vote in the board. The State Board of Education shall appoint the directors from the municipal districts as soon as practicable after the passage of this act, so that two shall retire annually, the said State board to determine by lot the succession of their retirement. They

shall require the said director to possess the qualification of an elector in the city of New Orleans and the necessary fitness and capacity for the office, and each new director, before taking his seat, shall take the oath of office prescribed for State officers.

SEC. 2. *Be it further enacted, etc.*, That as soon as practicable after the passage of this act the Board of Directors for the city of New Orleans shall adopt an estimate of debt and expenditures for the year 1873, and thereafter, during the month [of] October in each year the board shall in like manner adopt and communicate to the Council of the city of New Orleans an estimate for the year commencing on the first of January next ensuing.

SEC. 3. *Be it further enacted, etc.*, That it shall be the duty of the city of New Orleans to keep in good repair, through the proper department, all school houses, fences, grounds and apartment buildings belonging to the city, and the Council shall see the proper carrying out of this requirement, and make due provision therefor in the budget of current city expenses as a part thereof.

SEC. 4. *Be it further enacted, etc.*, That the Council, after receiving the estimate required in this act for the year 1873, or subsequent years, shall proceed to make provision for the support of public schools in addition to those required in section three of this act, to be made for the preservation of city property. For the purpose of such support it shall levy a tax of not less than one-fourth of one per cent. on the taxable valuation of all property in the city of New Orleans, and no provision in any general or special law limiting the aggregate power of taxation of the city of New Orleans, or of the Council, shall prevent the levying of at least one-quarter of one per cent. per annum for school purposes. The tax herein required to be levied for the year 1873 shall be in addition to the taxes levied by the Council in the month of December, 1872, and collectable therewith.

SEC. 5. *Be it further enacted, etc.*, That the revenues of the School Board for its necessary expenses, and the uses and purposes of the public schools, shall be as follows: The proceeds of the tax of twenty-eight cents on the one hundred dollars levied by the Council of the city New Orleans for 1872, the annual taxes levied in accordance with this act, the pro rata of State school tax distributed according to sections thirty-four and thirty-five of act No. 6 of extra session of 1870, any donations, bequests, fines or poll tax received for or accruing to the school fund, and such sum or amount as the City Council may appropriate out of the general funds upon the annual budget, which is hereby authorized, although the same may be raised as a part of the tax for current city expenses; and such sums, if any, as may be raised upon a vote of the qualified electors authorizing taxation beyond or exceeding the limits laid down by law for taxation not authorized by such election; *provided*, that appropriations for purchasing landed property or erecting buildings may, at the option of the Council making the same, be expended under its control; and *provided further*, that property and buildings purchased or erected by the School Board shall be the property of the city of New Orleans, and only alienable by the consent of the Council, and shall not be subject to seizure for any debt.

SEC. 6. *Be it further enacted, etc.*, That for the purpose of relieving the public schools of the city of New Orleans from the pressure of debt, the Council of the city of New Orleans is hereby directed to issue new consolidated bonds, general series, at the rate for said bonds of ninety cents on the dollar in favor of all holders of warrants of the School Board for the debts for the years 1871 and 1872, who may desire and demand the same. On the delivery of such warrants to the Administrator of Public Accounts of the city of New Orleans, he shall issue his

warrant on the Administrator of Finance for the delivery of bonds accordingly.

SEC. 7. *Be it further enacted, etc.*, That no warrant or certificate of any kind shall be hereafter receivable for any school tax, but the school taxes shall be payable in cash only; and the Administrator of Finance shall pay out the cash received for the tax of 1872 for the oldest warrants outstanding of 1871 or 1872, so that no warrants of any month shall he paid until those outstanding of previous months are paid or fully provided for, and the cash hereafter received from the State and from other sources, including the school tax of 1873, shall be appropriated for the expenses of each month in turn, beginning January 1, 1873; and no writ of *fieri facias* or of mandamus shall lie for the seizure of any school moneys in the fiscal agency or treasuary of the city of New Orleans or of the School Board, or to direct or enforce its paying out otherwise than in the manner and sequence required in this act.

SEC. 8. *Be it further enacted, etc.*, That the teachers and employees of the Board of Directors of the public schools of the city of New Orleans shall be appointed by said board at such rate of annual salary as may be fixed, and to continue until until otherwise ordered by the board; but no annual salary shall be construed as giving a fixed time of employment; and the board may at any time vacate any position by notifying the incumbent thereof. But no school officer, director or committee shall be empowered to remove any teacher, and no position or appointment shall be vacated except by the board at any meeting of the same. And no suit or action shall lie against the Board of School Directors, or against the school moneys or revenues for the payment of any discharged officer or teacher, the school fund being held sacred for the actual current expenses of the schools. The pay of the regular incumbent, in case of absence from any cause shall be allowed *pro rata* for actual days employed

to the supernumerary or other person temporarily acting. In all suits by or against the Board of Directors of the public schools of the city of New Orleans, or by or against the president of the board, or the Administrator of Finance of the city, involving the disposition of moneys raised or to be raised for school purposes, in case the said board, president or Administrator of Finance shall have occasion to appeal, sue out injunction, or take other proceedings in which ordinary parties would be required to give bond and security, such bond and security shall be dispensed with.

SEC. 9. *Be it further enacted, etc.*, That there shall be appointed by the Board of School Directors a committee on teachers, who shall examine applicants for employment as teachers. The superintendent of the sixth division shall be required to attend and assist at all the examinations of said committee. They shall keep a record of the examination of candidates for teachers of all district (intermediate or primary) schools, and such examination in branches of teaching in which the same may be practicable, shall be in writing. The original papers shall be preserved, and a figure or estimate affixed to each study, whether the examination therein be written or oral. The aggregate per centage or estimate for each candidate shall be test of proficiency, and the list of candidates shall be preserved for the selection of teachers by the board, which shall be bound to select for each and any future vacancy from the twenty names standing highest on the list; *provided*, the committee on teachers shall strike from the list all persons removing from the city, or resigning or declining to be further considered as candidates, and may for cause or reason rendering unfit the employment of the candidate, notwithstanding proficiency, remove his or her name therefrom, and no name shall be stricken from the list by the committee on teachers only as provided for in this act, in case of dismissal of teachers. Teachers in

the schools who shall have been examined by the committee or the State Superintendent, and whose per centage or estimate shall place them in the list of candidates to be selected from, shall be duly considered for promotion in all cases of vacancy; and *further provided*, that nothing in this section shall be construed to prohibit the State Superintendent of Education from issuing to teachers State certificates of qualification.

SEC. 10. *Be it further enacted, etc.*, That the Board of Directors of the public schools shall not be empowered to make contracts or debts for the year 1873, or any subsequent year, greater than the amount of the revenue provided for according to this act, or other school laws existing, it being the intent hereof that parties contracting with said board shall take heed that due revenue shall have been provided to satisfy the claims, otherwise they shall lose and forfeit the same, and no action or execution shall be allowed in aid thereof, and that the board shall not exceed its powers in the incurring of debt.

SEC. 11. *Be it further enacted, etc.*, That this act shall take effect from and after its passage, and all laws or parts of laws conflicting therewith be repealed as far as they so conflict.

ACT 123 OF 1874.

No. 123]. AN ACT

For the better organization and government of the public schools of the city of New Orleans; to set apart the school funds for each year; to provide that the directors shall be directors from the city at large; to increase and secure the standard of qualification for teachers, and regulate their appointment; to enforce the local school tax and the duties of the City Council in reference thereto; to provide for an assistant division superintendent; to require the directors to visit the schools, and to establish a normal school.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That as soon as practicable after the passage of this act, the Auditor of Public Accounts shall report to the Superintendent of Education how much of the two mills tax for the support of public schools has been collected upon each separate annual assessment since the institution of said tax, and how much remains delinquent or uncollected, also, how much of the same has been apportioned according to law, how much, if any, remains in the treasury, and thereafter, with every apportionment of school moneys among the parishes, the Auditor of Public Accounts shall report in like manner to the Superintendent of Public Education what proportion or part of the sum distributed has been collected for each respective year, and the Superintendent of Public Education shall make communication thereof to the board of school directors for the city of New Orleans and the Administrator of Finance of said city, which latter officer shall keep separately for each year the city tax for public schools, together with the State school tax apportioned for and raised upon the State tax made first due and collectible the said year.

SEC. 2. *Be it further enacted, etc.*, That the revenues thus received and set apart for each year shall be devoted

exclusively to the debts of said year, excepting any surplus remaining, which shall be covered into the treasury for the expenses of the succeeding year, and so on.

SEC. 3. *Be it further enacted, etc.*, That in all future appointments to fill vacancies upon the board of school directors for the city of New Orleans as now constituted, the State Board of Education shall appoint from the city at large, and from and after the passage of this act, the members of the board of school directors for the city shall be deemed directors from the city at large, it being the intent and object of this act to repeal the present district and ward system. The board shall not be required to give security on appeal or other bonds, and shall not be executed against for the payment of money by mandamus, except in cases as at present permitted by law.

SEC. 4. *Be it further enacted, etc.*, That the competitive system established by section nine of act No. 36 of 1873 is hereby continued in force, except so far as modified herein. Special examinations shall be held for professors or teachers of the high and normal schools. Teachers of district schools shall be of three grades, and shall be so classified in fixing the results of their examination. Those of the first grade shall be entitled to election to any position up to and including that of principal, those of the second grade to any position up to and including that of first assistant, and those of the third grade can only be appointed to positions inferior to that of a first assistant. Teachers at present in the schools, or who have taught three years previously in any grade, shall not be required to pass examination for such grade, except to obtain certificates from the State or division superintendent. But none shall be newly elected or promoted to be principals or first assistants unless they have passed a competitive examination and shall have received a certificate of qualification from the committee on teachers or the State Superintendent, as providedby section nine of act No. 36 of

1873, of the twenty highest on the record of the committee on teachers, and the Administrator of Finance shall not pay, or, if he does, shall be liable in solido with the directors appointing any teacher in violation of this section, for the full amount of the salary paid, and the directors making or participating in such appointments shall be liable to the teacher for salary and not the school fund or board in its corporate capacity. For teachers of third grade the application of the competitive system shall be optional with the school board, provided the candidates be fully qualified, and have the certificates by law from State or division superintendent, or the committee on teachers, or have served three years as aforesaid.

SEC. 5. *Be it further enacted, etc.*, That teachers shall only be elected or appointed by the board at a stated or regular meeting, excepting temporary appointments, the right to make which may be delegated to the committee on teachers. The appointees to serve only till next regular meeting, and the board shall not otherwise delegate or subdivide its power of appointment; *provided*, the committee on teachers may suspend for gross cause till such regular meeting only, when the board may further suspend or remove, otherwise the teachers shall be reinstated. No teacher shall be removed except by the board in regular meeting after such gross charges shall have been proved. Payment during suspension shall be optional with the board, whether by vacating and dispensing with the position, or supersedure or removal. It shall be sufficient that the board, upon action in regular meeting, notify the former incumbent that his or her services are no longer required, to discontinue the salary.

SEC. 6. *Be it further enacted, etc.*, That there shall be appointed by the State Superintendent of Education an assistant division snperintendent at a salary of two thousand five hundred dollars per annum, payable in monthly parts out of the current school fund. He shall assist the

division superintendent in the general discharge of his duties, and under his directions visit the various schools and aid in the public examinations; and that the office of secretary of the division superintendent of the sixth division, is hereby abolished.

SEC. 7. *Be it further enacted, etc.*, That the division superintendent shall be ex officio a member of all the committees for the purpose of consultation and information; he shall call them together and shall join in their proceedings, reports or otherwise at his option.

SEC. 8. *Be it further enacted, etc.*, That the board shall appoint permanent or annual high school committees, and monthly visiting committees for the district schools, to be rotated in such manner that each school district shall be visited at least once a month; and any director neglecting his assigned duty of visiting, or absenting himself from the board for two months in succession without leave of absence, shall forfeit his place in the board, and the State board shall fill the same for the unexpired term. No assignment as visiting director or committee to any district shall constitute him or them as directors of such district, except for the purpose of visiting and reporting upon the same, it being the intention of this act that each member of the board shall be a director of the public schools of the city of New Orleans at large, and alternated upon visiting committees in such manner as to visit the schools in all parts of the city during his term of office.

SEC. 9. *Be it further enacted, etc.*, That the tax required to be levied by section four of act No. 36 of 1873 shall be levied as soon as practicable after the expiration of the month of October, or the making of the estimate of the board of directors, but shall not be invalidated if delayed by any cause. The levy up to one-fourth of one per cent. shall in no case require an election or approval by the qualified electors, nor shall an increased levy require such election or approval unless thereby the aggregate or limit

of city taxation be exceeded. Failure of the Mayor or any Administrator to comply with said section four of act No. 36 of 1873 before the close of the year in which the estimate is made, shall render his office *ipso facto* vacant, and the Governor shall fill the same by appointment, and the Council shall then proceed to act. Ordinance No. 2418, Administration series, is hereby ratified and confirmed, and ordered to be carried out.

SEC. 10. *Be it further enacted, etc.*, That the board of directors of the public schools for the city of New Orleans be empowered to open and conduct a normal school for the city of New Orleans, and the committee on teachers shall be ex officio the committee on said school, and graduates thereof, after two years attendance, shall be noted as to proficiency, as required in section nine of act No. 36 of 1873, amended by this act, and graded, and receive certificates accordingly, as candidates for teachers under the provisions of the present act.

SEC. 11. *Be it further enacted, etc.*, That the certificates of qualification issued by the State Superintendent of Public Education after the passage of this act, shall entitle the holder thereof to rank on the list of candidates from which teachers are to be selected for any position in the high, normal, grammar, intermediate or primary schools, and the State Superintendent of [Public] Education is hereby required to furnish the school board with the names of such qualified persons, and the grade of certificate issued by him.

SEC. 12. *Be it further enacted, etc.*, That this act shall go into effect from and after its passage, and all laws, parts or provisions of law contrary thereto are hereby repealed.

ACT 133 OF 1880.

No. 133.] AN ACT

To liquidate the indebtedness of the city of New Orleans, and to apply its assets to the satisfaction thereof; to create a board of liquidation, and prescribe their duties; and to provide for a fiscal agent and for the levying of a sufficient tax to pay said interest.

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That for the purpose of liquidating, reducing and consolidating the debt of the city of New Orleans, as hereinafter specified, a permanent syndicate of six citizens of the said city is hereby created. The said syndicate shall be chosen as follows: two by the Governor of the State of Louisiana, two by the Lieutenant Governor, and two by the Speaker of the House of Representatives, and the Mayor of the city of New Orleans, the Treasurer and the Comptroller thereof, as hereinafter provided, shall be *ex officio* members of said syndicate; *provided*, that in case no change is made in the present city government, the present commissioners of the consolidated debt, shall act as *ex officio* members of said syndicate, and the members of the syndicate so named shall fill all vacancies in their number from death, resignation or otherwise.

SEC. 2. *Be it further enacted, etc.*, That the commissioners of the consolidated debt, or the city officers provided and named in section one of this act, and the *syndicate hereby created, shall* constitute a board of liquidation of the city debt, and the said board shall have exclusive control and direction of all matters relating to the bonded debt of the city of New Orleans. The board of liquidation shall cause to be prepared bonds of the city of New Orleans, which bonds shall be used only for the purpose of negotiation or of exchange, as hereafter provided. The said bonds shall be signed by the Mayor and countersigned by the Administrator of Accounts and of

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Finance, or such officer or officers as may be hereafter created to fill their respective functions. They shall be made payable in fifty years from the day of the approval of this act, and bear interest at the rate of four cent per annum, from the date of said bonds, payable, semi-annually, on the first day of April and October of each year, said interest represented by one hundred coupons annexed to each bond. The said bonds and interest coupons annexed may be issued for such sums as may be deemed most convenient by the board of liquidation, and be made payable at such place or places as may be designated in the bond; but the said bonds shall be made payabfe, interest and principal, in lawful money of the United States; and the said board of liquidation shall be and it is hereby empowered and authorized to establish in New York, London, Paris and Amsterdam such agencies as they may see fit and desirable.

SEC. 3. *Be it further enacted, etc.*, That the board of liquidation of the city debt be and it is hereby authorized and empowered to retire and cancel *the entire valid debt* of the city of New Orleans, except the floating debt created up to the date of the passage of this act, whether represented by bonds of various classes or by judgments, either by the sale of the new bonds created under this act and appliance of proceeds to the purchase of such old obligations, or by exchange of the new bonds against said old obligations, on such terms as may be agreed upon between the holders of the said old obligations and the board of liquidation; *provided*, the new bonds shall not be sold for a less sum than eighty cents, in cash, on the dollar, and that no exchange shall be made at a greater rate than fifty cents in new bonds per one dollar of the face value of the old obligation with interest accrued thereon; *and provided further*, that the entire issue of new bonds sold or exchanged, as above provided, shall not exceed in all ten millions of dollars.

SEC. 4. *Be it further enacted, etc.*, That should any obligation of the city of New Orleans be deemed fraudulent or invalid, by any member of the board of liquidation, the same shall not be purchased, exchanged or retired until the holder of the same shall have applied to the proper court for relief, when, if final judgment be in his favor, it shall be deemed to be a valid obligation of the city; and should any member of the board of liquidation knowingly audit, fund, purchase or retire, for value, any illegal obligation of the city of New Orleans, or shall use any of the bonds herein authorized, or the proceeds thereof, or any of the city's assets or property in the hands of the board, by virtue of this act for purposes other than those contemplated in this act, he shall, on conviction thereof, be punished by fine of not less than one thousand dollars and imprisonment at hard labor for not less than one year.

SEC. 5. *Be it further enacted, etc.*, That it shall be the duty of the city authorities, as soon as possible after the organization of the board of liquidation of the city debt, to turn over and transfer to the said board all the property of the city of New Orleans, both real and personal, not dedicated to public use, and the board of liquidation shall be and is hereby empowered and authorized to dispose of said property on such terms and conditions as may be deemed favorable; the proceeds of such sale or sales to be deposited with the fiscal agent of the board at credit of "city debt fund."

SEC. 6. *Be it further enacted, etc.*, That nothing in this act shall be construed as affecting or in any manner impairing the Act 31 of 1876, commonly known as the "Premium Bond Act," but it will be the duty of the city authorities to turn over and transfer to the board of liquidation of the city debt all moneys collected on account of the tax levied in accordance with the provisions of the premium bond act; and it shall be the duty of the board

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of liquidation to apportion the proceeds of said tax and apply the same *pro rata* and in the proportion which each form of bonded debt shall bear to the entire amount of the city's debt; and such portions of the said proceeds of tax as shall not properly belong to the outstanding amount of premium bonds shall be applied to the payment of interest on the bonds created under this act.

SEC. 7. *Be it further enacted, etc.*, That it is hereby made a felony, punishable, on conviction, by fine not exceeding five hundred dollars and imprisonment at hard labor not exceeding ten years, for the fiscal agent or any member of the board of liquidation of the city debt to divert or misappropriate any portion of the debt and interest fund herein created from its legitimate channel, as provided.

SEC. 8. *Be it further enacted, etc.*, That the surplus arising from the collection of the debt and interest tax, or from the sale of assets in the hands of the board of liquidation of the city debt, after paying the interest coupons of the bonds issued under this act, shall be used for the purchase and retirement of any valid bonds of the city of New Orleans heretofore created at the rate not exceeding fifty cents per dollar, or, at the discretion of the board, for the retirement of the bonds created under this act at a price not exceeding par; and the bonds or obligations purchased, exchanged or retired shall be canceled and destroyed by the said board of liquidation, after public notice of the same shall have been given in the official journal of the city of New Orleans, and in the presence of such witnesses as may desire to attend. A *proces verbal* of the same, giving the amounts, numbers, dates and other particulars, for identification of the obligations destroyed, shall be made out and sworn to by a majority of the board of liquidation, and published within ten days of such destruction in the official journal of the city of New Orleans.

SEC. 9. *Be it further enacted, etc.*, That the board of liquidation is required and empowered to open, keep and regulate a special book of registry of bonds of the consolidated bond series of 1880, as follows, to-wit: Any holder or owner of any of the former or old bonds of the city, issued previous to the passage of this act, upon surrendering the same for cancelment, according to the provisions of this act, shall be entitled to have the amount and number of bonds due him registered in said book, in such manner and form as the board of liquidation may determine and prescribe, whereupon, instead of giving to said party a new bond, as contemplated by the preceding sections of this act, the board of liquidation shall grant to such party a certificate of registry, in such form as said board of liquidation may determine and prescribe, and said certificate to be transferable, in person or by proxy, on the records of the books of the board of liquidation, and the semi-annual on the amount of said certificates, instead of being represented by interest coupons, shall be payable to such party or his order in such form and manner as said board of liquidation may determine and prescribe; and the city of New Orleans shall cause a sufficient number of blank certificates of registry to be printed or engraved in the form and manner prescribed, and shall deliver said blanks to the board of liquidation, to be used agreeably to this section.

SEC. 10. *Be it further enacted, etc.*, That it shall be the duty of the Council of the city of New Orleans to provide a proper office for the board of liquidation of the city debt; but the expenses of engraving, printing and issuing the bonds created under this act, and all the necessary clerical and office expenses, shall be paid out of the funds appropriated and belonging to the payment of interest and principal of the said bonds; *provided*, that no member of the board of liquidation shall receive any salary or emolument of any kind for his services therein.

SEC. 11. *Be it further enacted, etc.*, That the City Council be and is hereby required to levy an annual tax, calculated upon the assessment of the preceding year, less twenty per cent., sufficient to pay in full the interest on all the bonds issued under the provisions of this act, and any tax levied shall continue in force until superceded by a new levy for the same purpose.

SEC. 12. *Be it further enacted, etc.*, That all parts of all laws in conflict with this act be and the same are hereby repealed.

ACT 67 OF 1884.

No. 67.] AN ACT

To amend and re-enact Sections 2, 3 and 5, of an act entitled "An Act to liquidate the indebtedness of the city of New Orleans, and to apply its assets to the satisfaction thereof; to create a Board of Liquidation, and prescribe their duties; and to provide for a fiscal agent, and for the levying of a sufficient tax to pay said interest," approved April 10, 1880; and to further provide for the redemption of the bonds authorized herein, the payment of the interest on the same, when said tax is not levied; and for the disposition and sale of said assets and other property.

WHEREAS, Due notice of the introduction of this act has been given, in accordance with Article 48 of the Constitution; and

WHEREAS, The legislation heretofore enacted, under Article 254 of the Constitution of the State, providing for the liquidation of the indebtedness of the city of New Orleans, has in part proved inoperative;

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That Section 2, of Act No. 133, approved April 10, 1880, be amended and re-enacted so as to read: That the commissioners of the consolidated debt, or the city officers, provided and named in Section 1 of this act, and the syndicate hereby created, shall constitute a Board of Liquidation of the city debt, and the said board shall have exclusive control and direction of all matters relating to the judgment and bonded debt of the city of New Orleans. The Board of Liquidation shall cause to be prepared bonds of the city of New Orleans, which bonds shall only be used for the purpose of negotiation or exchange, as hereinafter provided. The said bonds shall be signed by the Mayor and Treasurer of the city of New Orleans, and countersigned by the Comptroller of said city; they shall be dated June 1, 1884, and be made payable in fifty years from said date, or sooner, at the option of the city, and bear interest at the rate of five per cent. per annum from the date of said bonds, pay-

able semi-annually on the first days of June and December of each year; said interest to be represented by one hundred coupons annexed to each bond. The said bonds and interest coupons annexed may be issued for such sums as may be deemed most convenient by the Board of Liquidation, and be made payable at such place or places as may be designated in the bond, but the said bonds shall be made payable, interest and principal, in lawful money of the United States.

SEC. 2. *Be it further enacted, etc.*, That Section 3, of Act No. 133, approved April 10, 1880, be amended and re-enacted so as to read: That the said Board of Liquidation of the city debt be and it is hereby authorized and required, and it is made the duty of the said board, to retire and cancel the entire debt of the city of New Orleans *now in the form of executory judgments* and registered, under the provisions of Act No. 5, of 1870, and that which hereafter may become merged into executory judgments and likewise registered; except the floating debt or claims created for and against the year 1879, and subsequent years; that it is the full intent and meaning of this act to apply solely the privileges thereof to executory judgments, *at present rendered against such city*, and to such floating debt or claims against said city for 1878, and previous years merged and to be merged into executory judgments, whether absolute or rendered against the revenues of any particular year or years, previous to the year 1879; that for the purpose of retiring and canceling said judgment debt, the said board is authorized and required either to sell the bonds to be issued under this act at not less than their par value and apply the proceeds thereof to the payment of the said judgments, as above specified, or issue said bonds in exchange for said judgments.

SEC. 3. *Be it further enacted, etc.*, That Section 5 of Act No. 133, approved April 10, 1880, be amended and re-enacted so as to read: That it shall be the duty of the

city of New Orleans to turn over and transfer to the Board of Liquidation, immediately after the passage of this act, all property of the city of New Orleans, real and personal, not dedicated to public use; *provided*, that in the sale of batture property, which is herein included, the right of the city to all future accretions shall be reserved, all assets of said city realized, and to be realized, except such assets and revenues as pertain to the administration of said city, and necessary for the support of the same as at present authorized, all uncollected revenues of said city anterior to the year 1879, when collected; and the said board is hereby authorized and required to dispose of said property and assets, other than stock held in corporations, on such terms and conditions as said board may deem to be to the best interests of the city, and apply the proceeds thereof, together with the uncollected revenues above mentioned, when the same are collected: *First*, to the payment of the interest on the bonds authorized herein in the event that the tax authorized by Section 11 of said Act No. 133, approved April 10, 1880, be not levied; *Second*, to the redemption and cancellation of the said bonds; *provided*, that bids for the sale of the same shall be by sealed proposals, and that preference shall be given to the lowest bidder; and *provided further*, that no bids above the par value of said bonds shall be accepted.

SEC. 4. *Be it further enacted, etc.*, That for the further redemption of said bonds the said Board of Liquidation is hereby authorized and required after each and every allotment of series following the passage of this act, to advertise for sealed proposals for the exchange of drawn premium bonds in possession of the city for the bonds authorized herein to the amount of fifty thousand dollars, of said bonds issued under this act; *provided*, that no exchange be made unless preference be given to the lowest bidder.

SEC. 5. *Be it further enacted, etc.*, That nothing shall

herein be construed as in any manner affecting or interfering with the disposal of property of said city, created under the provisions of Act No. 33, approved March 31, 1877, otherwise than is provided for in Section 14 of said act.

SEC. 6. *Be it further enacted, etc.*, That all laws or parts of laws in conflict herewith be and the same are hereby repealed.

ACT 110 OF 1890.

No. 110.] JOINT RESOLUTIONS.

Proposing an amendment to the Constitution providing for the funding of the funded debt of the city of New Orleans, other than Premium Bonds, into four per cent bonds; providing a special tax of one per cent to pay the bonded debt of the city, and exempting the said four per cent bonds from taxation, and further authorizing the said city to assume and pay such unpaid claims of the Board of School Directors of said city and parish which it may find to be equitably due by said board.

SECTION 1. *Be it resolved by the Senate and House of Representatives of the State of Louisiana, two thirds of all the members elected to each house concurring*, That the following amendments to the Constitution of the State be submitted to the electors of the State at the next election for Representatives for the General Assembly in the year 1892, for the purpose of retiring the now existing valid outstanding bonds of the city of New Orleans, including the bond certificates or bonds issued under the act of the Legislature No. 58 of 1882 and to retire judgments now or hereafter rendered against the city on floating debt claims prior to 1879, entitled to be funded under act No. 67 of 1884, the said city of New Orleans is hereby authorized and directed, on and after the adoption of this amendment, to issue through the Board of Liquidation of the City Debt, bonds to be known as the Constitutional Bonds of the City of New Orleans, not exceeding ten millions of dollars, at fifty years, bearing four per cent per annum interest, to bear date and be in the form prescribed by the Legislature. The said bonds shall be applied by the said board to the retirement of said outstanding bonds and judgments, by the sale of said Constitutional Bonds, and application of the proceeds of sale by the Board of Liquidation, to pay or purchase said outstanding bonds and judgments, or by exchanging the said constitutional bonds for bonds, on the terms and in the mode prescribed by the Legisla-

ture. For the payment of the interest and principal at maturity, of said constitutional bonds, and other outstanding bonds not retired under this amendment, and for the payment of the annual allotments and premiums of the premium bonds of said city, the said city is hereby authorized and directed to levy annually, and until the full payment of said bonds, a special tax of one per cent. on all the real and personal property of the city, said tax to be part of, and not in addition to the tax of twenty mills and two-tenths of a mill on the dollar of valuation now levied for all purposes by the city of New Orleans, and the said tax shall be paid over as collected to, and be applied by the Board of Liquidation, to the payment of the interest and principal at maturity of said Constitutional bonds, and outstanding bonds not retired, and to the payment of the allotments of Premium bonds and premiums extant, in the hands of holders.

Said tax is hereby declared to be the contract right of the holders of all said bonds; and the exemption of said Constitutional bonds from all taxation by the City of New Orleans and State of Louisiana, is hereby recognized and declared, and after the payment of all the annual interest on said Constitutional bonds and bonds not retired and the payment of the said annual allotments of premium bonds and premiums extant in the hands of holders, and after making provisions for a sinking fund, at such time and of such an amount as the Legislature prescribes, the surplus of said one per cent. shall be disposed of as prescribed by the Legislature.

The act passed at the present session No. 36 entitled "An act to carry into effect the Constitutional amendment passed at the present session relative to the bond debt of the city of New Orleans," etc., be and is hereby approved and confirmed in all its parts as a contract between the city of New Orleans and the holders of the aforesaid Con-

stitutional bonds, Premium bonds and of the bonds outstanding not retired as aforesaid.

SEC. 2. *Be it further resolved, etc.*, That the city of New Orleans be and is hereby authorized and empowered to examine into and assume the payment of the claims or obligations of the Board of School Directors for the city and parish of Orleans due for the years 1880, 1881, 1882, 1883 and 1884, now in the hands of original owners, who have in nowise parted with their right of ownership or pledged the same, as may be found to be equitably due by said board for services rendered, labor performed or materials furnished by authority of said board.

SEC. 3. *Be it further resolved, etc*,, That all electors voting at said election for said amendment shall place upon their ballots, the words "For the city of New Orleans debt amendment," and all electors voting at said election against said amendment shall place on their ballots, "Against the city of New Orleans debt amendment."

AN ACT

To carry into effect the constitutional amendment passed at the present session of the Legislature, relative to the bond debt of the city of New Orleans, and to authorize and direct the said city to issue through the Board of Liquidation of the city debt, four per cent. bonds to be known as the Constitutional bonds of the city of New Orleans, payable fifty years from date; and to direct the retirement of the now outstanding bond debt of said city, premium bonds excepted, by the sale of said Constitutional bonds and application of proceeds by the Board of Liquidation to the payment of said outstanding bonds, premium bonds excepted, and to the payment also of certain judgments against the city on floating debt claims created prior to 1879, and to authorize the purchase by said board of said outstanding bonds, other than premium bonds, or, the exchange thereof for said Constitutional bonds, and for the payment of said Constitutional bonds and of the aforesaid outstanding bonds, not retired under this act, and for the payment of the annual allotment of premium bonds and premiums; to direct the levy and collection by the city of the tax of one per cent. now levied for the bond debt, and to direct the payment to and application by the Board of Liquidation of said taxes, to the purposes aforesaid for which it is levied, and to provide a sinking fund for said Constitutional bonds; and for the disposition of the surplus of said tax not required for the aforesaid bond debt, and to recognize said tax as the contract right of the holders of the aforesaid bonds, and to recognize also the exemption of said Constitutional bonds from all taxation, and to define the functions and powers of said Board of Liquidation.

Whereas, Due notice of intention to apply for the passage of this act having been advertised, as required by article 48 of the Constitution.

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That, in order to provide for the retirement of the outstanding bond indebtedness of the city of New Orleans, and such other indebtedness as under existing laws, is or becomes entitled to be funded into any series of bonds, always saving and excepting, however, the bonds known as premium bonds, the city of New Orleans is authorized, empowered and directed to issue bonds to the amount of ten millions of dollars; nine thousand of which bonds shall be for one thousand dollars each, and two thousand of which shall be for five hundred dollars each, to be known as the "Constitutional Bonds of the City of New Orleans," dated July 1st, 1892, payable

fifty years after date, with the right to call by lot not more than seven hundred thousand dollars per annum after the year 1925, bearing four per cent. per annum interest, payable semi-annually and represented by interest coupons attached thereto.

Said bonds shall be numbered, those of one thousand from one to nine (9) thousand, and those of ($500) five hundred each from one to two thousand ($2000), and shall be signed by the Mayor and Comptroller of the city of New Orleans, and delivered to the board of liquidation of the city debt, to be used for the purposes aforesaid in accordance with the provisions of this act.

Each of said bonds shall, at the time of its issuance by the said Board of Liquidation and not at any time anterior thereto, be countersigned by the president and secretary of said board; and a daily report shall be made to the Mayor by said Secretary of the number of the bonds so countersigned and delivered, and the purpose for which they were issued.

These daily reports shall be laid before the City Council by the Mayor; and the finance committee of said council is required to examine and verify said reports at least once a month, and to report the result of their examination and verification to the council.

SEC. 2. *Be it further enacted, etc.*, That the Board of Liquidation is hereby authorized and empowered to sell and dispose of such amounts of said Constitutional bonds as may be deemed requisite for the purposes hereinafter expressed, the sales of bonds to be made on sealed proposals or bids to purchase to be invited by advertisements published at least five times during the period of thirty days, in one or more newspapers in the city of New Orleans and the city of New York, and no sale to be made before said delay and advertisement, the bonds to be sold to the highest bidder if the bid is deemed acceptable, but the board is to have the right to reject all bids, the bonds

to be sold at the highest premium obtainable, and no sale shall be made at less than par.

Said advertisements shall provide that all accepted sales shall be consummated by the payment of the price bid, and the delivery of the bonds purchased at least three days before the date of the maturity or of the call date of the bonds that are proposed to be purchased with the funds derived from the sales; where bonds are sold to pay judgments as hereinafter provided, the advertisements shall provide for the payment of the price, and the delivery of the bonds on a fixed day, and all past due interest coupons on the bonds sold shall be cut off and cancelled before delivery to the purchasers, and provided no sale of said constitutional bonds shall be made more than thirty days in advance of the period when the funds are needed for the payment or purchase of bonds.

SEC. 3. *Be it further enacted, etc.*, That all the funds received by said Board of Liquidation from the sale of Constitutional bonds, shall be immediately deposited with the fiscal agent of the city of New Orleans, or if the fiscal agent is not satisfactory in the opinion of the board, with a chartered depositary selected by the board to the credit of a special fund called the "Bond Sales Fund," which said fund shall be used solely and exclusively for the purpose of retiring by payment all the said now outstanding valid bonds of the city of New Orleans matured or subject to be called, including the certificates or bonds issued under the fourth section of the Act No. 58 of 1882, and including judgments now or hereafter rendered on floating debt claims prior to 1879, entitled to be funded under Act No. 67 of 1884, but excluding premium bonds issued under the Act No. 31 of 1876, not to be retired under this act, and the interest upon all said bonds subject to call, shall cease after publication of the calls, as now provided by existing laws; no check shall be honored on said fund unless accompanied by a certificate signed by the presi-

dent and secretary of said board, describing the bonds it is intended to retire, and certifying that said bonds have been surrendered to said board and cancelled, or describing the judgments to be paid and annexing a certificate of its satisfaction.

SEC. 4. *Be it further enacted, etc.*, That after the payment of all the aforesaid outstanding bonds subject to call or matured, as provided in section 3 of this act, the Board of Liquidation with the fund derived from the sale of Constitutional bonds, shall have the power to purchase the unmatured outstanding bonds of the city, premium bonds always excepted, and to this end, the board by advertisement published once a week in one or more newspapers in the City of New Orleans and the City of New York for the space of thirty days, shall invite sealed proposals from the holders to sell said outstanding bonds, and the board is authorized if deemed judicious to purchase said out;tanding bonds at the lowest price named in the proposals, but is to be under no obligation to accept, but may in its discretion reject any and all proposals; no purchase of outstanding bonds shall ever be made without the assent of the City Council, and in case of said purchase, the check for the purchase price of the bonds shall be accompanied by a certificate signed by the president and secretary of said board, describing the bonds purchased and certifying that the bonds have been surrendered and cancelled, and provided further that no purchase of said outstanding bonds shall ever be made at any price higher than the face of the bond with accrued interest.

SEC. 5. *Be it further enacted, etc.*, That after the payment of all the aforesaid outstanding bonds subject to call or matured, as provided in section 3 of this act, the board is hereby authorized and empowered to exchange for the valid outstanding bonds of the city of New Orleans, save and except premium bonds, such an amount of the Constitutional bonds as may be requisite for the purpose of

said exchange, said exchange of the Constitutional bonds issued under this act for said bonds surrendered in exchange to be made on the terms and conditions as follows: the board by advertisement inserted in one or more newspapers in the city of New Orleans and city of New York, to be published three or more times for and during the space of thirty days, shall invite proposals to exchange said outstanding bonds for the Constitutional bonds authorized by this act; the board shall be under no obligation whatever to accept any bid or proposal, but in its discretion is hereby authorized and empowered only if it sees fit to exchange said Constitutional bonds at the lowest price or rates of exchange specified in the said bid or proposals for said bonds surrendered in exchange; *provided*, however, the board shall use its best efforts to secure as high a premium as possible for the said Constitutional bonds, and and in no case shall said Constitutional bonds be exchanged at any rate less than the par thereof and *provided further*, that no exchange shall be made for said bonds surrendered in exchange at any rate higher than their par with accrued interest, and *provided further*, that a process verbal shall be prepared and put on file by the board of the numbers and amounts of the bonds surrendered in exchange and at the rate at which they were surrendered and of the numbers and amounts of the Constitutional bonds issued in exchange, and at the rate at which they were issued, stating also the date of the exchange, and *provided further*, that no exchange shall ever be made without the previous assent of the city council.

SEC. 6. *Be it further enacted, etc.*, That all bonds retired under the provisions of this act, shall be immediately cancelled by perforating the same and the attached coupons; and such cancelled bonds and coupons shall not be destroyed but shall be kept by said board as vouchers, and shall be pasted in the bonds books, in accordance with the

system, and for many years past in vogue in the conduct of the business by said board.

The same method shall be pursued with reference to all bonds and coupons retired with the sinking fund herein provided, and all coupons paid year by year.

SEC. 7. *Be it further enacted, etc.*, That in order to provide for the payment of the principal and interest of the Constitutional bonds, herein authorized to be issued, and of all other outstanding valid bonds of the city of New Orleans, it shall be the duty of the council and and proper officers of the city of New Orleans to levy, for the year 1892, and annually thereafter, until the principal and interest of the bonds, herein provided to be issued, are fully paid, a special ad valorem tax of one per cent. upon all the taxable property, real, personal and mixed, in the city of New Orleans; said special tax to be a part of and not in addition to the tax of twenty mills and two-tenths of a mill on the dollar of valuation now levied for all purposes by the city of New Orleans. The proceeds of said special tax shall be paid over to the fiscal agent or depository of the Board of Liquidation, to the credit of said board, day by day, as the same is collected by the proper officials of said city; and neither the said city, nor any of its officers, shall have the custody, control, disposition or expenditure of said tax, or any part thereof, except as herein provided. In case the said city, at any time, shall fail or neglect to levy and collect said special tax, or in case the municipal government of the city should be abolished, or in case present territory of the city of New Orleans should be transferred to other municipal corporations, and no proper and efficient provision is made by law to compel those municipal governments to levy and collect said special annual tax of one per cent.; or, in case said municipal corporations refuse or neglect to exercise to this end a proper and efficient taxing power bestowed upon them, then, in any of these events, the said Board of Liquidation shall itself, by proper

resolution, have power to levy said tax, and to collect the same; and, in said levy and collection, to use any and all the machinery, rights, powers and authority established by the State for the levy and collection of the State taxes; and in case it should become necessary under the above mentioned or similar circumstances, for the said Board of Liquidation to levy and collect said tax, and said board should refuse or neglect to do so, any court of competent jurisdiction, shall, on application of any bondholder, have power to decree the levy of said special tax throughout the said territory, and to have the same collected by the sheriff, or executive officer of the court, and the proceeds applied to the payment of the interest and principal of said bonds. In case any such decree is entered, the sheriff or executive officer of the court, shall have all the powers, rights and authority granted by law by the State to her own tax collectors.

SEC. 8. *Be it further enacted, etc.*, That out of the proceeds of said one per cent. per annum tax, beginning in the year 1892, the said Board of Liquidation shall annually provide for the carrying of the premium bond plan, the payment of the interest upon the bonds herein authorized to be issued, and of the interest upon all other outstanding interest bearing bonds of the city of New Orleans, and after the year 1925, for the annual sinking fund necessary to call and retire the nunber of bonds provided for in section 9 of this act. After making, in each year, the provisions above required, and after deducting the expenses incurred by said board, and after paying any deficiency in the interest fund of any previous years, one-half of the surplus of said tax shall be passed to the credit of a special fund, to be known as the "permanent Public Improvement Fund," to be disposed of as hereinafter provided; the other half of said surplus shall be paid over to the School Board of the city of New Orleans, in addition to any fund appropriated by said city out of other funds,

to be used in the maintenance and support of the public schools in said city.

SEC. 9. *Be it further enacted, etc.*, That, commencing with the year 1926, five hundred thousand dollars of Constitutional bonds shall be annually called and retired by said board in the manner herein provided, with funds derived from the proceeds of said tax of one per cent.; and commencing with the year 1937, seven hundred thousand dollars of said Constitutional bonds shall be annually called and retired, in the manner herein provided, with said funds. In order to determine each year what bonds shall be called and retired, the number of all outstanding bonds shall be placed in a wheel on the first Monday of July in each year, commencing with the year 1926, and five hundred numbers, or seven hundred numbers, as the case may be, shall be drawn out, two numbers of the five hundred dollar bonds counting as one. The numbers of the bonds so drawn shall be published in New York and New Orleans for thirty days together with a notice that said bonds must be presented for payment on the ensuing first of January; and that after that date all interest will stop on said bonds. All bonds so paid shall be cancelled as soon as delivered to said board in the manner specified in section 6 of this act, and detailed report thereof made by the Secretary of the board to the Mayor, who shall lay the same before the council for examination and verification by the Finance Committee thereof.

SEC. 10. *Be it further enacted, etc.*, That, the "Permanent Public Improvement Fund," above provided for, shall be used exclusively for the construction of permanent public improvements in the city of New Orleans, such as levees, canals, drainage stations, pavements, public buildings, public parks and bridges, and all ordinances passed by the city council to be paid out of this fund, shall first be approved by the said Board of Liquidation, who shall not draw any check on said fund, unless they are con-

vinced, upon proper inquiry, that said ordinance covers the construction of a permanent public improvement, within the purview of this act. The true interest and meaning of this clause is not to give said board any authority to say to what permanent public improvement any fund shall be applied, but only to see that said funds shall be applied exclusively to the construction of improvements that are permanent.

SEC. 11. *Be it further enacted, etc.*, That the Board of Liquidation of the City Debt, established by Act No. 133, of the Acts of 1880, as now constituted, is hereby created a body corporate, with right of existence and succession until January 1st, 1943, with power to sue and be sued, to have a corporate seal, to make reasonable rules and regulations for the conduct of its business, and to employ counsel and a reasonable clerical force. None of its members shall receive any compensation for his services. One of its members shall be elected president, and another vice-president, who shall act in the absence or disability of the President. They shall select a secretary (not a member of the board), who shall give bond for the faithful performance of his duties in the sum of twenty thousand dollars ($20,000), and this bond shall be renewed every three years. He shall receive a salary, to be fixed by the board, not to exceed thirty-five hundred dollars ($3500) per annum, and shall hold his office at the pleasure of the board. Their funds shall be deposited with the fiscal agent of the city of New Orleans, or with some chartered bank in the City of New Orleans selected by the board. The City of New Orleans shall provide, in the city hall or elsewhere, proper offices and quarters for said board and its officers, books, records and archives. The clerical office expenses, counsel fees, and the cost of all printing and engraving bonds under this act shall be paid from said tax fund. On the first of January and July of each year, said board shall make, in printed form, to the city council,

a detailed report of all its receipts and all its expenditures, and of its transactions and doings under the provisions of this act, with the names of all its employes, and the amount of compensation paid to each. Nothing in this act contained shall be construed to affect or change in any manner the duties, powers and functions of the Board of Liquidation under existing laws, not inconsistent with this act, or the rights of said board to the assets and property of the city not dedicated to public use, including the uncollected taxes prior to 1879; but said duties, functions, rights and powers are maintained and confirmed in full force.

SEC. 12. *Be it further enacted, etc.*, That any member of said Board of Liquidation who removes his domicile from the city of New Orleans, or who is convicted of any crime against the State, or who is declared insolvent or bankrupt, or who becomes incapacitated to perform his duties, shall forfeit his membership, and it shall be the duty of said board to declare his membership vacant, and to elect his successor. Any member may be removed by a two-third vote of the whole board, for misfeasance, malfeasance in office, or for neglect of his duties as a member; or he may be removed on similar grounds by any court of competent jurisdiction at the suit of any bondholder, or ten tax payers.

SEC. 13. *Be it further enacted, etc.*, That in case all, or the majority of the members of said board, should for any reason become vacant, so as to prevent a quorum of said board, any court of competent jurisdiction shall have power and authority, on the application of holders of at least ten thousand dollars ($10,000) of said Constitutional bonds, to be had contradictorily with the city of New Orleans and the surviving members of the board, if any there be, to fill enough of said vacancies to constitute a quorum, and the quorum so obtained shall fill the remainder of the vacancies.

SEC. 14. *Be it further enacted, etc.*, That said board shall have power, with the concurrence of the City Council, to make and publish reasonable and proper rules for the registry of the bonds to be issued under this act.

SEC. 15. *Be it further enacted, etc.*, That said Constitutional bonds shall be exempt from all taxation State, parish and municipal.

SEC. 16. *Be it further enacted, etc.*, That all of the substantial provisions of this act are hereby declared to be a contract between the State of Louisiana, the city of New Orleans, the tax payers of said city and each and every holder of said Constitutional bonds.

SEC. 17. *Be it further enacted, etc.*, That the Board of Liquidation shall immediately cease extending outstanding bonds under the act No. 58 of 1882.

SEC. 18. *Be it further enacted, etc.*, That nothing in this act contained shall be construed to affect or disturb, in any manner, the existing right to the tax now levied for premium bonds and for said outstanding bonds, not retired, said tax being preserved in full force, and the payment of the allotment of premium bonds and premiums extant in the hands of holders, and of the interest and principal at maturity of all outstanding bonds that may not be retired under this act shall continue as now directed under existing laws; said tax of one per cent. being levied for premium bonds and outstanding bonds, not retired, as well as for the aforesaid Constitutional bonds substituted for the outstanding bonds paid, purchased or retired by exchanges under this act.

SEC. 19. *Be it further enacted, etc.*, That the general provisions of this act shall not take effect until the adoption of the aforesaid Constitutional amendment; provided, however, that portion of the act prohibiting the further extension of bonds under the Act No. 58 of 1882 shall go into effect immediately, and all laws or parts of laws contrary to or inconsistent herewith be and the same are hereby repealed.

ACT 114 OF 1896.

No. 114.] AN ACT

To provide for the drainage of the city of New Orleans: to establish the Drainage Commission of New Orleans: to provide ways, means and funds for such drainage; to provide for the issue and payment of bonds and to direct the co-operation of the Board of Commissioners of the Orleans Levee District:

Whereas due notice under Article 48 of the Constitution has been given of the intention to apply to the Legislature for the passage of this act:

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, That a board is hereby established to be called the Drainage Commission of New Orleans, which shall be composed as follows, to-wit: Of the Mayor of New Orleans, the chairman of the Council Committees of Finance, of Budget, and of Water and Drainage, of the president of the Board of Commissioners of the Orleans Levee District, and two other members of said board, selected by it; of the president of the Board of Liquidation of the City Debt of New Orleans, and one other member of said board to be selected by it, being nine members in all; and said commission, by its said name, shall have all the powers and succession of a body politic and corporate.

SEC. 2. Be it further enacted, etc., That said commission shall organize by selecting one of its members as president and some competent person as secretary. It shall have power to make by-laws and rules for its own government, and to define the duties of its officers and committees, and to change the same by a vote of two-thirds of its members. It shall hold regular meetings on such days as it may determine, and shall call special meetings, as may be provided for in its by-laws. All meetings of said commission, or any committee, or special committees it may appoint, shall at all times be open and

public, and its books, papers, documents and records, shall be public records.

And it is hereby made the duty of the government of the city of New Orleans to provide suitable offices for said commission, wherein its meetings shall be held and its books, papers, documents and records shall be kept.

SEC. 3. Be it further enacted, etc., That that portion of the funds in the hands of the Board of Liquidation under the provisions of Sections 6 and 10 of Act No. 110 of the General Assembly of Louisiana of 1890, accruing to public works, etc., from January 1, 1898, is hereby dedicated and applied to the purposes of this act; and all monies and funds now under the control of the city of New Orleans and hereafter to be received, arising from the sale of street railroad franchises or other franchises, are also hereby dedicated and applied to the purposes of this act.

All monies or funds thus hereby dedicated shall be drawn and expended by said Drainage Commission by checks signed by the president and secretary and countersigned by the mayor.

SEC. 4. Be it further enacted, etc., That said commission shall have full power to control and execute the drainage of the city of New Orleans, and may proceed to execute and carry out substantially the plan for such drainage, adopted by the Council of said city, by Ordinance 10,091, Council Series, approved July 10, 1895, so far as it may find said plan desirable and practicable, with the right however to modify the same as in its judgment circumstances may require.

It shall have power to make rules and regulations for the protection and conservation of all works under its control, both completed and uncompleted, and of all works necessary or incidental thereto, and any violation of the rules and regulations established by the said commission,

and duly promulgated in the Official Journal, shall be punished by a fine not exceeding $25 for each offence, or by thirty days imprisonment for each offence, or by both, in the discretion of the Recorder.

It shall be the duty of the city of New Orleans, at the request of said commission, to transfer to the custody and control of the said commission so much of the existing drainage plant or plants of the city of New Orleans as the said commission may deem necessary for their purposes; provided however, that the said city of New Orleans shall always, out of her general budget, provide the necessary funds to run all drainage machines now in existence or that may hereafter be established by the commission, the true intent and meaning of this act being that the funds of the commission shall be applied only to the construction of permanent public works, and no part thereof shall be applied to the operation of said works.

Nothing in this section shall be construed as compelling the commission to take charge of any of the present existing systems unless in their judgment it may be advisable to do so.

SEC. 5. Be it further enacted, etc., That all work done or supplies and materials ordered by said commission, of every kind and nature, except emergency work in times of extreme peril from storm or flood, shall be let by contract to the lowest responsible bidder, by sealed proposals, or by public auction, as the commission may determine, after at least thirty days' advertisement in two newspapers in the city of New Orleans, on approved specifications, one of which specifications shall always be that the contractor shall give bond, with security satisfactory to the commission in at least one-fifth of the amount of his bid for the faithful performance of his contract; and in case the work estimated by the said specifications shall exceed the sum of fifty thousand dollars, bids for the

same shall be similarly advertised in New York and Chicago, as well as in the city of New Orleans.

In all cases the right shall be reserved by the commission to reject any and all bids.

SEC. 6. Be it further enacted, etc., That the works performed by said commission shall, so far as possible, be done in such manner as to benefit all parts of the city without discrimination as to locality, and in order to raise funds for the purpose of doing such work speedily and on an extensive scale, said Drainage Commission of New Orleans shall have power to issue and dispose of its negotiable bonds to an amount not exceeding five millions of dollars in denominations of $20, $50, $100, $500 and $1000, bearing interest at a rate not exceeding five per centum per annum, payable semi-annually, to be sold by said commission at not less than par. Said bonds shall have forty years to run, and shall, when issued and not before, be executed by the president and attested by the secretary, under the seal of the commission, shall be payable to bearer and shall have semi-annual interest coupons attached bearing the engraved signature of the president. All monies and funds dedicated and applied by this act to the purposes thereof are consecrated to the payment of the principal and interest on said bonds, and the commission after the year 1920, shall have the right to call in by lot not exceeding two hundred thousand dollars of said bonds in July of each year. The numbers of the bonds so drawn by lot, together with notice that such bonds will be paid on the ensuing first of January, and that interest thereon will then cease, shall be published in a New Orleans newspaper for thirty days.

SEC. 7. Be it further enacted, etc., That all the provisions of this act respecting the dedication and application of funds and money shall constitute a contract with the holder or holders of bonds issued as aforesaid, the obligation of which contract shall not be impaired and may

be enforced by any holder of said bonds by proceedings of mandamus and injunction or by other proper proceedings in court.

SEC. 8. Be it further enacted, etc., That said commission shall have power to employ such engineers and counsel as it may find necessary in the progress and execution of its work; and shall have the power to expropriate property according to existing laws, by legal proceedings in its name and the right in all streets, and in and over all lands of the State and city in New Orleans, or in the parish of St. Bernard, is hereby granted to said commission for any of its works.

SEC. 9. Be it further enacted, etc., That it shall be the right and duty of the Board of Commissioners of the Orleans Levee District, in the exercise of its obligations under Act 79 of 1892, to co-operate with the Drainage Commission, in executing the plans of said commission, and in order to make such co-operation more effective the said Board of Commissioners of the Orleans Levee District shall have the power and authority to continue the levy of the tax of one mill on the dollar provided for in Sec. 5 of Act 93 of 1890, until the completion of the levee and drainage systems of the city of New Orleans.

SEC. 10. Be it further enacted, etc., That the said commission shall semi-annually, beginning on the first day of January, 1897, make to the Common Council of the city of New Orleans, a full and detailed report of all sums received and sums expended, the purposes for which expended, and a statement of the progress and character of the work contracted for and performed during the previous six months, and the said commission shall, from time to time, if so required by the council, present special reports as they may be demanded.

SEC. 11. Be it further enacted, etc., That no member of the said commission shall receive any compensation whatever for his services as a commissioner, except trav-

eling expenses incurred in behalf of the commission.

SEC. 12. Be it further enacted, etc., That no member of said commission shall ever be interested in any contract or in the profits of any contract made by said commission, nor for six months after the termination of his connection with the commission, under the penalty of the absolute nullity of said contract, nor shall any member of said commission ever be surety for any contractor or officer of the commission.

SEC. 13. Be it further enacted, etc.; That all laws and parts of laws in conflict with this act are repealed, and this act shall be liberally construed to effect its object.

ACT 63 OF 1898.

No. 63]. AN ACT

To amend and re-enact Sections 6, 7 and 8, of Act No. 114, of 1896, entitled "An act to provide for the drainage of the City of New Orleans; to provide ways, means and funds for such drainage; to provide for the issue of bonds, and to direct the co-operation of the Board of Commissioners of the Orleans Levee District;" and to provide for flushing in connection with such drainage.

Whereas, due notice under Article 50 of the Constitution has been given of the intention to apply to the General Assembly for the passage of this act.

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, That Sections 6, 7 and 8, of Act No. 114 of 1896, approved July 9th, 1896, be and the same are hereby amended and re-enacted so as to read as follows:

SECTION 6. Be it further enacted, etc., That the works performed by said Commission shall, so far as possible, be done in such manner as to benefit all parts of the city without discrimination as to locality, and in order to raise funds for the purpose of doing such work speedily and on an extensive scale, said Drainage Commission of New Orleans shall have the power to issue and dispose of its negotiable bonds to an amount not exceeding one million, five hundred thousand dollars, in denominations of $1,000 each, bearing interest at the rate of five per centum per annum, payable semi-annually, to be sold by said Commission at not less than par. Said bonds shall have forty years to run from November 1, 1897, and shall when issued, and not before, be executed by the President and attested by the Secretary under the seal of the Commission; shall be payable to bearer, and shall have semi-annual interest coupons attached bearing the engraved signature of the President. Such bonds may also be registered under such regulations as said Commission may prescribe. All monies and funds dedicated and applied by this act to the purposes thereof are primarily conse-

crated to the payment of the interest on said bonds; and the redemption of the principal thereof, as hereinafter provided, but any surplus of said funds inuring to said Commission from taxes of 1899, 1900, 1901 and 1902, and from other sources prior to January 1st, 1903, not required to pay current interest on said bonds may be used for the general purposes of said Commission. The Commission, after year 1920 shall have the right, and it shall be its duty, to call in and pay not exceeding two hundred thousand dollars of said bonds in July of each year, and in the order of their issue, beginning with number one. The numbers of the bonds so called in together with notice that said bonds will be paid on the ensuing first of January, and that interest thereon will then cease, shall be published in a New Orleans newspaper for thirty days. Said Commission may also agree with any holder of said bonds that the same may be called in at any time after November 1, 1899. Any bonds which may be hereafter authorized in excess of above amount of $1,500.00 shall be subordinate to issue above limited.

SECTION 7. Be it further enacted, etc., That all the provisions of this act, respecting the dedication and application of funds and monies shall constitute a contract primarily with the holder or holders of said bonds, as aforesaid, to the extent aforesaid, and also with each and every person or corporation that may have entered into contracts with the said Commission; and the obligation of said contract as to dedication and application of funds and monies shall not be impaired, and may be enforced by any holder of said bonds, or by any contract creditor of said Commission, by proceedings of mandamus and injunction, or by other proper proceedings in court.

And in case said Drainage Commission shall cease to exist for any cause prior to the full payment of said bonds in principal and interest, or shall fail to comply with the provisions of this act in regard to the application of said

funds and money, the Board of Liquidation of the city debt shall be charged with the right and duty of applying said funds and monies to the payment of said bonds in principal and interest according to the provisions and intent of this act.

SEC. 8. Be it further enacted, etc., That said Commission shall have power to employ such engineers and counsel as it may find necessary in the progress and execution of its work, and shall have the power to expropriate property according to existing laws by legal proceedings in its name, in the Parishes of Orleans, Jefferson or St. Bernard; and the right in all streets and in and over all lands of the State in the Parish of Orleans and of the City of New Orleans, and in and over all lands of the State in the Parishes of Jefferson and St. Bernard, is hereby granted to said Commission for any of its works. Said Commission shall also have the right to arrange its Power Houses and the disposition of the electric energy thereby generated, in such way, and to construct such conductors, motors, flushing apparatus and other appliances, as will enable the City of New Orleans to flush gutters from the Mississippi River.

Art. 254. The school funds of the State shall consist of: 1st. Not less than one and one quarter mills of the six mills tax levied and collected by the State. 2d. The proceeds of taxation for school purposes as provided by this Constitution. 3d. The interest on the proceeds of all public lands heretofore granted or to be granted by the United States for the support of the public schools, and the revenue derived from such lands as may still remain unsold. 4th. Of lands and other property heretofore or hereafter bequeathed, granted or donated to the State for school purposes. 5th. All funds and property, other than unimproved lands, bequeathed or granted to the State, not designated for any other purpose. 6th. The proceeds of vacant estates falling under the law to the State of Louisiana. 7th. The Legislature may appropriate to the same fund the proceeds of public lands not designated or set apart for any other purpose, and shall provide that every parish may levy a tax for the public schools therein, which shall not exceed the entire State tax; provided that with such a tax the whole amount of parish taxes shall not exceed the limits of parish taxation fixed by this Constitution. The city of New Orleans shall make such appropriation for the support, maintenance and repair of the public schools of said city as it may deem proper, but not less than eight tenths of one mill for any one year; and said schools shall also continue to receive from the Board of Liquidation of the City Debt, the amounts to which they are now entitled under the Constitutional amendment, adopted in the year 1892.

Art. 313. All surplus revenues of the city of New Orleans from the year 1879 to the year 1895, both inclu-

sive, except the surplus revenue dedicated to permanent public improvement, and to schools, by Act No. 110 of 1890, derived from the one per cent. tax levied under said act, shall be turned over by the city to the Board of Liquidation of the City Debt. Said board shall redeem all claims evidenced by financial ordinance or judgment against the city of New Orleans, for debts arising and incurred between the years 1879 to 1895, both inclusive, payment of which has not heretofore been provided for out of the reserve and permanent public improvement funds of the city for the years 1893 to 1898, both inclusive, excepting therefrom the claims of school teachers for the years 1880 to 1884, payment of which has been authorized by Act No. 110 of 1890, and is now being provided for by the city, said claims or judgments to be purchased on the most reasonable terms offered by creditors within the period of eighteen months succeeding the date of the adoption of this Constitution, the said board to invite proposals by public advertisements, to be made bimonthly; provided, any and all bids may be rejected. For the purpose of such redemption the city of New Orleans, through the Board of Liquidation, is hereby authorized to issue bonds to the extent of two hundred and fifty thousand dollars, bearing four per cent. per annum interest, payable semi-annually in such denominations as may be by said board determined upon, maturing in fifty years from the date of issue, but subject to redemption by said board in the reverse order of their issue at any time after sixty days' notice.

Said board is hereby authorized in its discretion to exchange said bonds for said claims against the city, evidenced by financial ordinances or judgments, or to sell said bonds, and with the proceeds thereof purchase said claims; provided, that no sale of said bonds shall be made for less than par.

Said Board of Liquidation shall, at any time it may

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be necessary, sell a sufficient number of the Constitutional Bonds of the city of New Orleans, now unsold, of the issue provided for by Act No. 110 of the General Assembly for the year 1890, and by the amendment to the Constitution of the State submitted to the people by said act and adopted at the general election in 1892, to provide for the payment of interest or principal of the bonds hereby authorized to be issued. Whenever the said Board of Liquidation shall have received from the surplus revenues of the city of New Orleans, as provided herein, sufficient funds to meet the issue of bonds hereby authorized in principal and interest, the remainder of the surplus revenues so turned over to the said board shall revert to the city.

Art. 314. The provisions of the amendment embodied in joint resolution of the General Assembly No. 110, approved July 8, 1890, and thereafter ratified by the people and made part of the Constitution, are recognized as of full force and effect; the authority conferred upon the city of New Orleans and upon the Board of Liquidation of the City Debt, with respect to the issuance of Constitutional bonds of the city of New Orleans, and to the levy and collection of a special *ad valorem* tax of one per cent. upon all the taxable property, real, personal and mixed, in said city, for the payment of said bonds, in principal and interest, and with respect to the manner of such payment, is confirmed, as are also all rights vested by said amendment in the present and future holders of said bonds, whether issued or to be issued; and no limitations imposed by other provisions of this Constitution upon the authority of the city of New Orleans, shall be held to include, apply to, or affect, the taxing power herein contemplated and confirmed.

Art. 315. The city of New Orleans is hereby authorized and required to examine into and assume payment of the obligations of the Board of Directors of

the Public Schools of the parish of Orleans for unpaid salaries of school teachers and portresses and of other legitimate claims against said School Board, for the years 1882, 1883 and 1884, and for unpaid salaries of school teachers and portresses for the years 1885, 1886 and 1887, now in the hands of the original owners, who have in no wise parted with their rights of ownership, or pledged the same, as may be found by said city to be equitably due by said board. All claims to be examined into and assumed by the city of New Orleans under this article shall be presented to and filed with the City Council of said city within ninety days after the adoption of this Constitution, and not thereafter.

Art. 317. The funds requisite to pay said claims shall be provided by said Board of Liquidation, by the sale of a sufficient number of the Constitutional bonds of the city of New Orleans of the issue provided for by Act No. 110 of the General Assembly for the year 1890, and by the amendment to the Constitution of the State submitted to the people by said act and adopted at the general election in 1892.

OCT 30 1899

SUPREME COURT OF THE UNITED STATES.

Filed Oct. 30, 1899.

No. 369

THE BOARD OF LIQUIDATION OF THE CITY DEBT AND THE DRAINAGE COMMISSION OF NEW ORLEANS, Plaintiffs in Error,

vs.

THE STATE OF LOUISIANA, ex rel. ALBERT B. WILDER et al., Defendants in Error.

Writ of Error to the Supreme Court of Louisiana.

Brief for the Board of Liquidation of the City Debt, Plaintiff in Error.

Motion to Dismiss or Affirm.

October, 1899.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. ———

THE BOARD OF LIQUIDATION OF THE CITY DEBT AND THE DRAINAGE COMMISSION OF NEW ORLEANS, PLAINTIFFS IN ERROR,

versus

THE STATE OF LOUISIANA, EX. REL., MISS L. B. WILDER ET AL., DEFENDANTS IN ERROR.

Writ of Error to the Supreme Court of Louisiana.

BRIEF FOR THE BOARD OF LIQUIDATION OF THE CITY DEBT, PLAINTIFFS IN ERROR, IN REPLY TO THAT OF THE DEFENDANTS IN ERROR, IN SUPPORT OF THEIR MOTION TO DISMISS OR AFFIRM.

Defendants in error argue at length and cite authorities to the effect, that the opinion of the state supreme court is a part of the record, and may be examined by this court, for the purpose of ascertaining the grounds upon which the lower court based its decree; this to determine whether or not, the case was decided upon any

ground or grounds within the reviewing power of this court.

It will be sufficient to say, that plaintiff in error in no respect disputes any of these propositions, it having been expressly decided in Crossley vs. New Orleans, 108 U. S., 105, Crescent City Live Stock Company vs. Butchers' Union, 120 U. S., 141–146; New Orleans Water Works Co. vs. Louisiana Sugar Co., 125 U. S., 27, and Egan vs. Hart, 165 U. S., 189, that in cases coming from the Supreme Court of Louisiana, the opinion of the court, as presented by the record, may be examined here; to determine whether or not the judgment can be reviewed.

So far from disputing the soundness of the contention of defendants in error in this respect, plaintiffs in error rely upon the *opinion* of the Supreme Court of Louisiana, as a complete demonstration of the errors complained of in its *decree;* the former, while extending the fullest recognition to every federal right set up by the defendant boards, is bereft of all significance by the *decree*, which, in effect, necessarily denies them.

Upon the assumption that the opinion is open for examination, for the purpose of determining whether or not "the decision" of the court below is adverse to any right or claim set up under the constitution of the United States, defendants in error declare, that if upon examination, it should appear that the same has been "recognized and accorded to the party claiming it," manifestly there is no error that this court is called upon to review, and the writ should be dismissed.

The vice of this argument is the same which is found in the decree of the state court; of course there is no dispute here, that if the rights founded upon the constitution of the United States had been "recognized," by the court *a qua*, this court would have no jurisdiction by writ of error; but the recognition in view, is one that would have at least some semblance of meaning; that which defend-

ants in error attribute to the finding of the Supreme Court of Louisiana is altogether imaginary; a purer fiction could not be conceived; the opinion of the court declares that the defendant boards can not do, what the sole object of this suit is to compel them to do; but after reaching this conclusion in a most voluminous *opinion*, it renders a *decree* ordering the defendants to do the precise thing, which the opinion declared they had no right to do; if the presence of a federal question, decided adversely to the party raising it, can be made more obvious than by a mere reading of the defendants' answer, and then the decree, surely the sharp contrast of the former with the opinion rendered in support of it, it is not easy to perceive how.

As has been said, in the other brief filed by the Board of Liquidation, this is not a case where any nonfederal defense is made, nor is it one upon which any ground of the lower court's decree is nonfederal in character.

The Board of Liquidation raised no single defense that was not solely federal in character; no other issues were dealt with by the opinion of the court below; in the face of the defenses grounded solely and exclusively upon the constitution of the United States, it was impossible for the court to decree in favor of relators, without overriding the federal defenses; the state Supreme Court did not hold that a single one of the contracts which it was claimed were impaired by article 317 of the constitution of 1898, did not exist; on the contrary, they were recognized as being in full force and effect, and the court sought to find a method by which relators could be awarded some kind of relief, without coming in collision with the federal constitution; it is but the simple truth to say, that this effort has entirely failed of its purpose; the *opinion* says, that the bonds authorized by article 317 can not be issued except under certain limitations; but its *decree* orders the sale of the bonds, without any of the restrictions so freely announced by the *opinion*, and directs

their issuance and sale without any condition or restriction whatsoever; the *opinion* and *decree* are irreconcilably inconsistent; if the former is a correct statement of the law, the decree can not be sustained for a moment; if the decree be a correct solution of the controversy, the opinion is a mere nothing; the federal questions are not evaded by the *opinion;* on the contrary, they are fully met and passed upon, in every instance, favorably to the Board of Liquidation; it is only fair to say, that the *opinion*, so far as relied upon to support or justify the *decree*, might as well have been omitted; as a matter of fact, the decree in such case would have had an appearance of strength, which in fact is entirely wanting, preceded as it is, by an opinion which shows that it is hopelessly erroneous.

Touching the authorities relied upon by defendants in error for the dismissal of this writ of error, their application is assumed to result from an examination of the state court's opinion here; the circumstance that plaintiffs in error, understand that an examination of the opinion gives point and emphasis to the jurisdiction of this court, while defendants in error insist that it shows an entire want of jurisdiction, is only the familiar case, of the same facts telling radically different stories to different minds; the theory of defendants in error is, that because the *opinion* of the court is favorable to plaintiffs in error, sustaining, as it does, every constitutional right they set up, that they have nothing to complain of; the fault of this reasoning is, that due effect is not given to the *decree* of the court, which, being the only form in which the state court could either enforce or deny the rights set up by plaintiffs in error, could not have been rendered, if any real recognition at all, was given to the rights of plaintiffs in error; this decree is adverse to every defense made by plaintiffs in error, every one of which was founded upon the constitution of the United States; in

point of fact, the soundness of the constitutional grounds of defense set up by plaintiffs in error, repeatedly declared by the opinion, is the merest mockery, when placed alongside of a decree absolute in its terms, incorporating none of the conditions, by the observance of which only, the opinion declares, defendants in error would be entitled to any relief; these conditions, were named by the opinion, for the expressed and only purpose of saving the plaintiffs in error, the rights which they claimed under the federal constitution; in other words, the opinion declares, that article 317, directing the sale of a sufficient number of Constitutional Bonds to pay relators' claims, could only be carried out by subordinating these bonds, and postponing their payment, both in interest and principal, to all contract rights in existence when the constitution of 1898 was adopted; that is to say, that the bond to be issued was to be inferior in character to all Constitutional Bonds, or contracts entitling any person to the same, and to all bonds and contracts made by the Drainage Commission prior to May 12th, 1898, when the constitution of that year became operative; in this view the *opinion* contains unquestioned recognition of all the federal rights claimed, and in this regard is free from objection, except that it creates a class of bonds unknown to the law, or to the constitutional amendment of 1892, under which article 317 directs their issuance, and which were never asked for by relators; but to what does this involved recognition, with its confusing results, amount, in the face of the *decree*, which binds the defendants absolutely, and omits all reference to any condition or limitation, of any character whatsoever, but which directs the sale of bonds as contemplated by article 317 without any condition? Under this decree, the rank of the bonds would be concurrent with that of all other Constitutional Bonds, and would be paid before, thus making them paramount, and not subordinate, as the opinion says they

must be, to all contracts and bonds made by the Drainage Commission, as these are payable out of the surplus, after all constitutional bonds are provided for; the *opinion*, declaring that no bond for the purposes sought by this suit can be made equal or concurrent with any contract obligation in existence prior to the going into effect of the constitution of 1898, is followed by a *decree* which places them upon the same footing as all other Constitutional Bonds.

The *decree* of the Supreme Court of Louisiana can not in any sense rest upon any ground independent of the federal questions involved; the opinion in support of the decree notices, expressly or by implication, no such ground, or question; the *opinion* propounds a theory by which relators may be awarded in this suit, which is for a mandamus, a relief which they do not seek, and which was not given to them by article 317, without interference with prior contract rights; the *decree* on the other hand, which the defendant must obey, unless it be reversed, requires it to violate every federal right which is pleaded in its answer; it is the decree, and not the opinion, which binds the defendant, and the directions of which it must follow; the latter ignores not only the federal rights claimed by the defendant, but also the opinion, which sets out the reasoning, in support of the decree, that the state Supreme Court considered that in the decree, was to be found its real decision of the case, and that the opinion was to have no effect upon it, is conclusively shown by the circumstance that an application for a rehearing made by plaintiff in error, which simply asked that all doubt be removed, by the court incorporating in its decree the conditions announced in such abundance by the opinion, was, after being held under advisement for many weeks, refused, without a word of comment or explanation upon this point; as a matter of fact, the opinion refusing the re-

hearing is barren of any reference to this ground, upon which the rehearing was asked.

Returning, however, to the authorities relied upon by defendants in error, there is a total want of application of any one of them to the present controversy.

In Eustis vs. Bolles, 150 U. S., 362, the facts were these: Bolles, the defendant, filed a petition of insolvency in a state court; Eustis, a creditor, proved a claim in the insolvency proceedings, and voted for assignees of the insolvent. In response to notice of an application for discharge, he appeared in the state court and opposed the same on the ground that the composition act was unconstitutional, and also that it was passed after the creation of his debt, and hence in violation of the contract clause of the constitution of the United States; subsequently Eustis received, in the insolvency proceedings, one-half of his debt, and signed a receipt setting forth that it was according to the composition formed by the courts. Eustis subsequently brought a suit for the recovery of the unpaid half of his original debt; in defense of this suit were pleaded the proceedings in insolvency, the offer of composition, its acceptance by the majority, in number and value, of the creditors, the discharge of the insolvents, and the acceptance by Eustis of the amount due him under the composition. The jurisdiction of this court was sought to be upheld on the ground that the insolvent or composition act under which Bolles made his surrender having been passed subsequent to the making of the contract out of which Eustis' claim arose, and hence was in violation of the contract clause of the federal constitution. It was said by this court (p. 368) that, upon such a state of facts—that is, the defendant relying upon his discharge under a state insolvent law passed subsequent to the creation of the indebtedness claimed, the claim presented a federal question, which, if adjudged by the state court adversely to the plaintiff, it would be the duty of this

court to consider the soundness of such judgment; but that it appeared that Eustis had accepted and received the money which had been awarded him as his portion under the insolvency proceedings, that his cause of action could not thus be taken away from him, without his consent, by proceedings under statutes of insolvency passed subsequently to the possession of his right; but that the action of Eustis, in so accepting and receipting for his dividend, was a waiver of his right to object to the validity of the insolvency proceedings; the wide dissimilarity between the case cited and that before the court is the conspicuous feature of the slightest comparison of one with the other; in the Eustis case the court held, that although plaintiff in error did originally have a right protected by the constitution of the United States, the denial of which by the state court would have been subject to review by this court, he had done acts which amounted to the waiver of such right, and that the decree of the state court, grounded upon such waiver, did not decide a federal question; that it was not for this court to inquire whether that view of the case was sound or not, as it was broad enough to support the final judgment, without reference to the federal question.

The slightest examination of the record here, discloses that the cited case presents no single feature in common with the instant case; the state supreme court here, has not found that the contracts which plaintiffs in error sought to protect from impairment, did not exist; it did not hold that any right under them had been waived; it recognized, and affirmed their present binding force: it's opinion points out a course by which relators could be awarded relief, without impairing the obligations of the contracts set up by defendant in the court below; it then ordered the satisfaction of the claims of defendants in error, in a mode radically different from that outlined in its opinion, and this decree, which neces-

sarily involves the doing of all which the opinion declares can not be done, can not be enforced, as it stands, without impairing the obligation of all the contracts which the court's opinion declares can not be impaired.

If it be true, as declared in the brief of defendants in error, page 16, that the language of the opinion controls the decree, the complaint of the plaintiffs in error apparently loses much of its force, but this statement of relators' views of the effect of the state court's unconditional judgment in their favor has now found its way into the record for the first time; the able counsel of defendants in error, in their brief, pages 16 and 17, use the following terse and pointed language:

"It suffices to say, that the language of the opinion controls, and whenever the question is presented for determination, as to the relative right of the bonds issued, and those to be issued under the article of the constitution, where they come in conflict, the determination and adjustment of their relative status will be controlled by the opinion and decree in this cause."

The opinion of counsel is that the opinion controls; their suggestion is that determination of the conflict be postponed until some time subsequent to the issue of the bonds, when a conflict would arise; this, it is respectfully submitted, would be not only a shirking of duty, but a blow to the credit of the city of New Orleans, in requiring it to issue a series of bonds, the status of which was in doubt, almost inevitably requiring litigation to remove; the precise character of the bond should be known, not only to the Board of Liquidation, but to the public, to which it would be offered for sale: the former that it might know exactly to what it was giving its sanction, and the latter to be informed as nearly as possible the value of the bond offered for sale, and which they might be induced to buy; to place upon the market a series of bonds of a doubtful character, resulting from a variance between the opinion

and decree in this case, might result in their not being sold at all, or only in proposals to buy at a price less than par, which, under section 1 of act 110 of 1890, the Board of Liquidation would be compelled to reject; if the status of the bonds, the issuance of which is directed by the state supreme court, were the same as that of the other Constitutioual Bonds, they would command the high premium now paid for the Constitutional Bonds already issued, and thus an amount of bonds in principal much less than relator's claims would be sufficient to pay the latter; it is earnestly insisted that the status of the bonds to be issued here, if any are to be issued at all, should at any event be determined now in the present suit; but be it borne in mind, that the defense raised by the Board of Liquidation is that the provisions of the constitutional amendment of 1892, act 110 of 1890, and the drainage commission acts of 1896 and 1898, furnish insuperable objections to the issuance of any bond at all under article 317 of the constitution of 1898.

If the state supreme court did not consider that the opinion controlled the decree, but, on the contrary, had in mind a complete separation of the two, and that the decree was to have an effect, according to its terms, that is to say, that the bonds to be issued in obedience thereto were not to be subordinated to any obligation payable out of the one per cent. tax, but that they were to be Constitutional Bonds of the precise character contemplated by article 317, that is, the same as the Constitutional Bonds already issued, that they should be burdened with no condition or limitation as to their rights, is shown by the fact that a rehearing was denied plaintiffs in error, which was based upon the theory that the court would find no objection to reconciling its decree with the opinion delivered in support of it; that the latter should contain the conditions and limitations which the opinion had declared, must be observed in the issuance of the bonds; this was in effect

nothing more than to ask the court to declare what defendants in error in their brief now claim, namely, that the opinion was intended by the court to control the decree, but this was refused without assigning any reason whatever, and in fact, without noticing the ground at all.

This action of the court is unintelligible, except upon the ground that its purpose was to give to the decree the only effect which under its terms it could possibly have, and this was the reverse of the doctrine announced by the opinion; it is impossible, therefore, to be give to the decree an interpretation which the court rendering it declined to place upon it; the refusal of the petition for a rehearing, based upon the assumption that the opinion was intended to limit and control the decree, is as clear and emphatic a declaration by the court of the reverse as could be made.

The case of Krieger vs. Shelby R. R. Co., 125 U. S., 46, in the appreciation of the writer, simply holds, that in a case where the highest court of a state defines rights conferred by certain state statutes, and bases its judgment upon the construction and effect of earlier statutes, upon grounds which would have been equally controlling, if the subsequent acts should not have been passed, there is no jurisdiction in this court by writ of error; it may be said, that this is no more than a statement of the familiar rule, that where a judgment of the highest court of a state is based upon grounds which include no federal question, or in other words, where it defines rights arising under statutes of a state, or where an interpretation is placed upon the latter, no federal question is presented and this court is without jurisdiction; if this view be correct, the Krieger case would apply here only to that part of this controversy in which defendants in error deny the capacity of the Board of Liquidation to raise the defense which is set up; whether it can or not is a question of local law, dependent upon the powers and rights given it by the state statutes by which it was created and is

governed; the state court in the present case has held that the board has full authority to make all of the defenses it has advanced,

Counsel for defendants in error misconstrue the ground of attack against the decree of the state supreme court; this latter is directed not against the *form* in which the court's decree is framed, but against the whole decree itself; the only decree which, in the judgment of plaintiffs in error, could have been made, was one of unqualified rejection of relators' demand, and the dismissal of their suit; the incorporation in the decree of the conditions and limitations set out in the opinion is and only could be a makeshift, and was dealt with by plaintiffs in error in their application for a rehearing in the court below, only because of their desire to terminate the controversy there, even to the extent of sacrificing their own views, by endeavoring to obtain from that court such a decree as might be free from constitutional objection; the only desire of plaintiffs in error is, that all rights by law committed to their care and administration shall be protected, and while, as a matter of law, they were entitled to a judgment absolutely denying all relief to relators, one, which like the opinion, would subordinate to all contract rights, naming them specifically, existing prior to the adoption of the constitution of 1898, the bonds to be sold to pay relators' claims, and postponing their payment, either in principal or in interest, until and after the satisfaction of all such rights, was all that was asked from the state supreme court on the rehearing; but this was refused, in fact not even referred to in the short opinion by which the rehearing was denied; but even if this had been granted, the judgment would then have been one not differing only in form from the one already rendered, but entirely different in character, in fact bearing no resemblance whatever to that produced by the decree complained of.

It is argued in the brief of defendants in error, that the

Board of Liquidation has no right or authority to prosecute this writ of error, for the reason that it is nothing more than an arm of the government of the city of New Orleans, charged with the application of the city's property and its assets, and such taxes as it is entrusted with, to the payment of the city's bonded indebtedness; that it is at all times subject to constitutional or legislative direction, with the right reserved to those whose interests are affected, to prevent any encroachment upon their rights by legislation, constitutional or otherwise, which in effect or operation would impair the obligation of existing contracts; and in support of these views they cite Board of Liquidation vs. L. & N. R. R., 109 U. S., 228.

It has been argued in the original brief for plaintiffs in error, pages 30 and 31, that the board's right to set up in the state court the defenses here pleaded had been upheld by the state supreme court in this case, and that this closed all further discussion of that phase of the controversy; if the board had the right to set up in the state court the defenses founded upon the constitution of the United States, it would have an equal right to prosecute a writ of error, and obtain in this court relief from a denial of any federal right by the decree of the highest court of the state; further, the board derives all of its rights and powers from statutes of the state of Louisiana, the interpretation of which is primarily a function of the highest court of that state; this has affirmed the full right of the board to stand in judgment, as it has done below, and to plead, and to have adjudicated, in the courts of the state of Louisiana, the federal rights and claims which are set up in its answer; this court, by a long series of decisions, has declared, that it would adopt and follow the interpretation of a state statute which has been put upon it by the highest court of the state in question.

See authorities cited on page 33 of original brief of plaintiffs in error.

Therefore, the right of the board to appear herein having been recognized by the highest court of the state of Louisiana, will not be inquired into by this court, and the right to defend, as has been done in the courts below, of necessity carries with it the right to bring this case here for review, if the requirements for jurisdiction be otherwise shown.

The facts and other conditions of the case in 109 U. S. are radically different from the one in hand: in the cited case, litigation was pending between the city and the railroad company, concerning the validity of a right of way granted over certain batture property by the former; during the pendency of the same the Board of Liquidation was created, by act 133 of 1880, section 5 of which provided, that the city should turn over to the board all of its property not dedicated to public use, which the board was empowered to dispose of, on such terms and conditions as might be deemed favorable, to carry out the purposes of its creation; in this condition, a compromise of the pending litigation was made by the city and the railroad company, under which the city received forty thousand dollars in money, and a decree entered perpetually enjoining it from interfering with the company's user of its grant of rights; the Board of Liquidation claimed that the forty thousand dollars should be turned over to it by the city, under the act of 1880, it having been decided by the Supreme Court of Louisiana, in Board of Liquidation vs. City of New Orleans, 32 La. An. Rep., 915, that a franchise or right of way granted a railroad was property, in the sense of section 5 of the act of 1880, and that the sum realized by the city as above should be turned over to it, to be applied to the reduction and retirement of the city's bonded debt; the board, however, not approving the compromise, instructed its attorney to take proper steps to have it set aside, to op-

pose the dismissal in this court of the city's appeal in the suit thus compromised, and to hold the fund decreed from the same, so as to restore it if the compromise was annulled, or to claim it for the board if it should become a finality (see page 226); a motion to dismiss being subsequently made by the railroad company, based upon a stipulation signed by the city attorney, pursuant to the terms of the compromise, this was opposed by the Board of Liquidation, on the ground that during the pendency of the appeal, authority over the subject matter of the controversy had been transferred from the city council to the board, and hence that the compromise was not binding; the board asked leave to prosecute the appeal in the name of the city; the matter was set down for argument at the next term of court; in the interim, complying with the condition imposed by the court, for the institution of a suit by the board in a court of competent jurisdiction, to set aside the appeal, the bill filed for this purpose in the Circuit Court was dismissed; this decree was brought up to this court by appeal; the court held that the city council had full authority to make the compromise; that by section 8 of act 20 of 1882, the city was expressly authorized to sell, in lots or squares, so much of the batture, from time to time, as might not be required for public purposes; and that by act 81 of the same year, whenever the city should contract with private corporations or individuals for the sale or lease of public privileges and franchises, such as the right of way for street railroads, or for other public undertakings, within her legal power and control, and that the price paid for the sale or lease of the same should be applied to the performance of works of public improvement; that all this was entirely inconsistent with the provisions of section 5 of the act of 1880, which was thereby repealed, as regards the control and disposition of batture property, directly operating upon

the powers of the board over the subject matter of the ccmpromise in question, and left the city council free to act in the premises; that all the legislation involved related to the distribution of the powers of the city government among different departments; the question presented no contract rights needing protection; that if the effect of section 5 of the act of 1880 was to pledge property not dedicated to public use, to secure the payment of the bonded debt, there had been nothing to prevent the legislature from revoking the pledge, until contract rights had in some way intervened, which, as a matter of fact, had not occurred, as it was agreed that no bonds had ever been issued by the board, under the authority or upon the faith of the act of 1880, nor the other bond act of 1882, before act No. 81 of that year, had been passed.

The court concluded that it resulted from the whole legislation, that the board had no power over the subject matter of the compromise, which was altogether within the departmental authority of the city council.

Giving full effect to the finding of the court that the Board of Liquidation is no more than one of the departments of the city government, charged with the duty of controlling and directing matters relating to the bonded debt, it can not be doubted that full recognition will be given to its duties and powers as such; while the absence of any contract rights in the case in 109 U. S., no bonds having been issued upon the faith of the dedication of the city property there in question, to the payment of the bonded debt, there was obstacle to its use for the other purposes named in the two acts of 1882; here the case is; quite different; if there be any contract created by the act of 1890 and the constitutional amendment of 1892, and the fund thereby created is dedicated solely and exclusively to certain purposes, and to no others, in this phase there is here presented a factor which was entirely wanting in the case cited;

there can be no doubt that if, under the act of 1880, and upon the faith of the dedication thereby made, any bonds had been issued by the board prior to the adoption of the two acts of 1882, the compromise in dispute would have been set aside by this court, to the extent that it in any manner impaired the contract evidenced by the bonds, or in any degree diminished the assets set aside for their payment; considering, for the sake of argument, the Board of Liquidation as a mere branch of the city government, it is clearly charged with the duty of protecting from diversion the funds committed to its control and administration, for the reduction of the bonded debt, and other obligations created or incurred under the act of 1890, and the constitutional amendment of 1892; it is evident, that besides such, the board is charged with the duty of resisting any attempt by subsequent legislation to reduce the permanent public improvement fund, not only before the passage of the acts of 1896 and 1898, but after their adoption, from the time any obligations were incurred or bonds issued by authority thereof; it is shown by the record that many thousands of dollars of Constitutional Bonds, to the payment of which, and judgments made payable under the act of 1884, the one per cent. tax was solely and exclusively dedicated, and contracts for permanent public improvements payable out of the surplus, under the provisions of section 10 of the act of 1890, were issued and incurred prior to the adoption of the constitution of 1898; it is also shown that bonds and contracts to a large amount were issued and made by the drainage commission, under the acts of 1896 and 1898, payable out of the surplus of the 1 per cent. tax, which would manifestly be diminished if the charges necessary to carry the bonds provided by article 317 of the constitution of 1898, were added to the 1 per cent. tax, compliance with which would undoubtedly admit as burdens against the tax, Constitutional Bonds for new purposes, which tax the act of 1890 declared

should be free from all burdens except the Constitutional Bonds which it authorized; the permanent public improvement fund created by section 8 of the act of 1890, and by the acts of 1896 and 1898, being set apart for the payment of the bonds and contracts of the drainage commission, would necessarily be decreased in amount, by the addition of burdens not enumerated by the act of 1890; the surplus dedicated to the bonds and contracts of the drainage commission was the same surplus described by sections 8 and 10 of the act of 1890, and could not, without impairing the surplus, which was the source of payment of the creditors and bondholders of the drainage commission, be made any less than it was under the act of 1890; and it is obvious that this would be the result of article 317, if carried into effect, since it would increase the annual burdens of the 1 per cent. by so much as would be necessary to provide for the bonds of which it directs the issuance.

There is here no question of the power of the Board of Liquidation, such as was dealt with in the case in 109 U. S.; the argument is, that because that case declares that the board is a department of the city government, it is without authority to stand in judgment here; but it is respectfully insisted that this is not a correct view of the board's position; by the express provisions of the act of 1890, the board is made the custodian of the one per cent. tax, and its duty with reference thereto defined with great particularity; it is to carry out the purposes of that act; the amendment which this was designed to execute declares, that the Constitutional Bonds can be sold only for two purposes, and the express provision of the act is that the funds derived from the sale of the bonds shall be used solely and exclusively to take up outstanding bonds of the city of New Orleans, and to pay judgments which may be retired under act 67 of 1884; this leaves no room for the board to make any other use of the bonds, or any of the

funds, than those permitted by the statute; to issue and sell bonds under article 317 of the constitution of 1898 is a purpose beyond anything authorized either by the constitutional amendment or the act, a compliance with it would be in total disregard of all rights arising under the amendment and the act, and a clear impairment, by admitting to the benefit of its provisions a class of obligations which are excluded by their express terms; as has been shown, in this connection, in our first brief, a constitutional provision of the state stands upon no higher footing than one of its statutes, both being subordinate to the constitution of the United States.

So far as are concerned the issue of bonds and the administration of funds under its control, the Board of Liquidation is evidently a trustee for all holders of the bonds, and creditors payable out of such funds; the main purpose of its creation was to manage and control all matters relating to the city's bonded debt, in accordance with the law, and the rights thereunder of all parties brought in relation to it; the language of section 2 of the act of 1880, ordaining that the board should have exclusive direction and control of everything relating to the bonded debt of the city of New Orleans, and the confirmation of these powers found in the concluding provisions of section 11 of the act of 1890, would be devoid of meaning if it were without power to resist any attempt to divert from their lawful destination, funds which by statutory direction it was ordered to apply to certain purposes, and no others; yet, such would be the condition, if the argument of defendants in error be well founded; neither the legislature nor the people of the state of Louisiana could dismember the Board of Liquidation, as suggested in the brief of the other side, under any conditions at all, for many reasons, principal among which may be mentioned that by section 11 of the act of 1890 it is made a body corporate, with right of existence and suc-

cession until January 1st, 1943, which is a substantial provision of the act, all of which, by section 16, is declared to be a contract between the state of Louisiana, the city of New Orleans, the tax payers thereof, and each and every holder of Constitutional Bonds; the right of these latter to insist upon their interests remaining with the authority constituted by the law, under which their bonds were issued, is a contract protected by the constitution of the United States.

It might be sufficient to say, that the Supreme Court of Louisiana, in its opinion in this case, has expressly denied the claim made by defendants in error in this connection; it was an issue in that court whether or not the board was authorized to stand in judgment, as it has here; the finding of the court upon this point is set out at length on pages 30 and 31 of the original brief of plaintiff in error, from a mere reading of which it is seen with what emphasis the court rejected this contention; besides which, on more than one occasion, the board has, in the courts of Louisiana, resisted attempts to unlawfully divert funds committed to its care, and to have asserted the rights vested in it by law.

Board of Liquidation vs. City of New Orleans, 32 La. An. Rep., 915.

State ex rel. Rubira vs. Board, 35 Do., 753.

State ex rel. Board vs. City, 36 Do., 524.

Board vs. New Orleans Water Works Co., 39 Do., 202.

State ex rel. Wood vs. Board, 40 Do., 398.

The bondholders, whose interests are here concerned, are not present in this case, for the reason that it is not only the right, but the duty of the board to protect their interests under the law; it is true that these, as declared in the brief of defendants in error, have been protected by the *opinion* of the lower court, but it is equally true that they have been overridden by its *decree;* while the ungracious duty of resisting an article of the state constitu-

tion is not welcomed by plaintiff in error, it can not be shirked; it is governed, and its *cestuis que trust* are protected, by the constitution of the United States, the paramount law of the land, and it is here appealing for such relief as it may rightfully obtain.

It is respectfully insisted that the case actually before the court, is not the one which is argued in many parts of the brief of defendants in error, in its repeated references to the fact that the *opinion* of the Supreme Court of Louisiana subordinates the bonds directed to be sold by the Board of Liquidation, to discharge the indebtedness assumed by the city of New Orleans, under the provisions of article 315 of the constitution of 1898; it is exceedingly unfortunate if plaintiffs in error have failed in making it plain to the court that it is not the *opinion*, but the *decree* of the state supreme court against which complaint is directed; it has been pointed out repeatedly in this brief, that while the opinion attempts to escape any repugnancy to the federal constitution, the decree is in bald violation of it; we have pointed out that the opinion, in the face of the decretal part of the judgment, is a mere nothing, the latter being absolutely inconsistent with the former, destroying, as it does, all that the opinion purports to grant.

By section 1 of the constitutional amendment of 1892, which, in the published acts, composes, with the act to carry it into effect, act 110 of 1890, and is printed immediately before the act by which it is to be executed, in the event of its adoption by the people, it appears that the Constitutional Bonds thereby authorized are to be issued for two purposes alone, and by section 2 a one per cent. tax is required for their payment; the authorized issue may be as high as ten million dollars, but only so many bonds as might be necessary to take up valid outstanding bonds, and judgments entitled to payment under act 67 of 1884, could be put out; no bonds at all were to be issued, except for these two purposes, and the extreme limit of ten

millions was to be reached only in the event that it was so required, to retire the outstanding bonds and pay the judgments mentioned; there was no authority given to issue a single bond beyond the number required to refund the outstanding bonded debt into Constitutional Bonds, and to pay such judgments as were entitled to payment under the act of 1884; the purposes for which the bonds were to be issued at all, was as much a limitation upon the powers of the board, as was the restriction of the entire issue under all circumstances, to ten million dollars; the primary object was to put the bond and judgment debt described into the form of four per cent. bonds; the limitation of the issue to ten millions was a condition of the exercise of the power, when there was a lawful occasion to use the power at all: in putting out any bonds consideration was to be first given to the purpose; if it was not one of the two named, there was absolutely no power to sell a bond; the purpose having been ascertained to be within the amendment, there then came into play the further, and secondary consideration, that in no event could the entire isssue exceed ten millions; defendants in error deal with this phase of the case as though the principal object of the act was to provide an issue of ten millions of bonds, and that the purpose to be thereby accomplished was immaterial; it is respectfully submitted that this is a reversal of the process intended by the amendment; the question of how many bonds can be issued, arises only after there is a clear right to sell any at all; if all outstanding bonds of the city of New Orleans, and all judgments governed by the act of 1884, were retired and paid, all power under the constitutional amendment would be exhausted, and no other bond could be sold for any purpose whatever; it is quite manifest, from a clear reading of the constitutional amendment, and the act following it, that they had in view nothing more than to take up the bonded debt of the city of New Orleans,

bearing high rates of interest, by converting it into a four per cent. bond, and to provide funds for the payment of all judgments entitled thereto under the act of 1884; there was clearly no intention to provide bonds for any purpose not mentioned in the amendment, which might be thereafter conceived, either by the General Assembly or the Constitutional Convention; as has been said, by way of illustration, if every bond of the city of New Orleans outstanding when the amendment was adopted had been retired, and all judgments then rendered or thereafter to be rendered, entitled to any standing under the act of 1884, had been paid, the power of the board as to the issuance of constitutional bonds would have been exhausted, and even lifeless; the amendment has no potency for the issuance of bonds for any purpose not thereby declared.

Proceeding further, so jealous of any abuse of power, designedly or otherwise, in the employment of any part of the one per cent. tax at variance with the intention of both the people and the legislature, the prohibition as to the issue of bonds for unauthorized purposes is in effect repeated with emphasis in section 2 of act 110 of 1890, adopted to execute the proposal embodied in the amendment preceding which provides in emphatic terms that the funds derived from the sale of the bonds shall be used "solely and exclusively" for the two purposes already named, which the issue of the bonds was designed to accomplish, namely, the retirement of the then outstanding bonded debt, and the discharge of judgments governed, as to their payment, by the act of 1884.

It is quite clear that the bond issue contemplated by article 317 of the constitution of 1898 would be an impairment of the contract of the holders of Constitutional Bonds already issued, in that it would admit to participation in the one per cent. tax, which is the security of the Constitutional Bond holder, a class of bonds issued for a purpose

not authorized by the constitutional amendment; it would further impair the contract of the Constitutional Bond holder, by the use of the proceeds of the Constitutional Bonds, directed by article 317, for a purpose other than the taking up of other bonds of the city of New Orleans, and the payment of judgments which, by section 2 of the act of 1890, are declared to be the sole and exclusive purposes for which the proceeds of any Constitutional Bond can be used; the issue and sale of the bonds contemplated by article 317 would necessarily compel the holders of bonds already issued to share with the holders of the new bonds a tax which belongs exclusively to them, and the holders of other obligations mentioned by the constitutional amendment of 1892, and the act of 1890; the Constitutional Bond holder is entitled to exclude from participation in the one per cent tax any obligation not admitted thereto by the law under which he holds his bond.

The contractors for permanent public improvement with the city of New Orleans, and the creditors and bondholders of the drainage commission, the former to be paid in full before the latter begins to be paid, being both payable out of the surplus of the 1 per cent. tax, have an obvious interest in resisting any additions to the burden of the tax, which would correspondingly diminish the surplus out of which they are to be paid, and any increase of the annual charges against the body of the tax would be clearly an impairment of the contract right of all persons payable out of the remaining surplus.

The Board of Liquidation has manifest authority to resist any encroachment upon, or impairment of, the rights of any person against the 1 per cent. tax; by law it is given the possession, control and administration of this tax; it is responsible for its disbursement in accordance with the statutes by which it is governed; it would be strange indeed, if, charged with the responsibility of administering this fund in accordance

with law, the board should have no power to determine for itself what the law required it to do in the discharge of a duty imposed upon it; and should be without power to resist in the courts any demand which in its judgment is unfounded in law, and compliance with which would require a violation of duty; if the contention of defendants in error be correct upon this point, the giving to the board of full control and direction of all matters relating to the bonded debt, the specific declaration of the purposes for which the bonds can be issued, and the limitation to the two same purposes of any funds derived from the sale of Constitutional Bonds, would be devoid of meaning, and subject to possible execution, only at the sufferance of any interested person who might entertain views at variance with the board; such powers as have been given to it, it is fair to presume, were intended to be exercised, not only when not opposed by any party, but on all proper occasions, and in case of dispute as to the correctness of the board's action, it would be monstrous if it were debarred from what is freely open to the humblest citizen, that is, appeal to the judicial power for the determination of the controversy.

All debts do not stand upon the same footing as to their payment, and the contention here simply is, not that the debt of relators should not be paid at all, but that it can not be paid in the mode attempted, without violating the rights of other parties, which are protected from impairment by the federal constitution.

All persons holding contracts under the constitutional amendment, and the act of 1890, are entitled, as a matter of right, to any and all benefit or advantage which is given by that legislation; if it happen that only nine million dollars of bonds, and not ten millions, which could have been used for the purpose if necessary, have been sufficient up to now to pay and discharge the then outstanding debt of the city of New Orleans, and such judgments as have up to this time been rendered against

the city, payable under the act of 1884, it is clearly their property right to enjoy the 1 per cent. tax in fullness and entirety, since the express provision of the constitutional amendment authorizing the bonds is that only so much of the ten millions fixed as the extreme limit should be used as might be necessary to effect the two purposes which the amendment was intended to accomplish; it is no answer to this to say that no injury results to the holders of the Constitutional Bonds, that the total of ten millions originally accepted to be necessary should be employed to pay relators' claims; to do this would be using the bonds for purposes never intended, and the holder of every Constitutional Bond has the right to restrain their further issue to the objects which they were intended to accomplish, and no other; it would have been far better for the constitutional convention to have authorized a new bond, and provided for it a source of payment; there is a still stronger objection, which would come upon the holders of the drainage bonds, and the owners of contracts made by it; these are payable out of the surplus, aud the necessary and obvious result of increasing the Constitutional Bonds, by their issuance for purposes not originally intended, would be to diminish the surplus out of which they are payable; if the surplus is not that so clearly defined by the act of 1890, but is such as will remain after the addition of charges established subsequent to the amendment of 1892, and the act of 1890, it is evident that their source of payment can be made quite different, much less than they were justified in considering it when they took their bonds, or made their contracts.

Respectfully submitted,

BRANCH K. MILLER,

Attorney for Plaintiffs in Error.

October, 1899.

Nos. 114 (& 119)

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JAMES H. McKENNEY,
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Supreme Court of the United States.

OCTOBER TERM, 1900.

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Nos. 114 and 119.

THE BOARD OF LIQUIDATION OF THE CITY DEBT, PLAINTIFF IN ERROR,

vs.

STATE *ex Rel.* MISS L. B. WILDER AND OTHERS, DEFENDANTS IN ERROR.

THE DRAINAGE COMMISSION OF NEW ORLEANS, PLAINTIFF IN ERROR,

vs.

THE SAME.

SUPPLEMENTAL BRIEF IN BEHALF OF THE PLAINTIFFS IN ERROR.

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Plaintiffs in Error.

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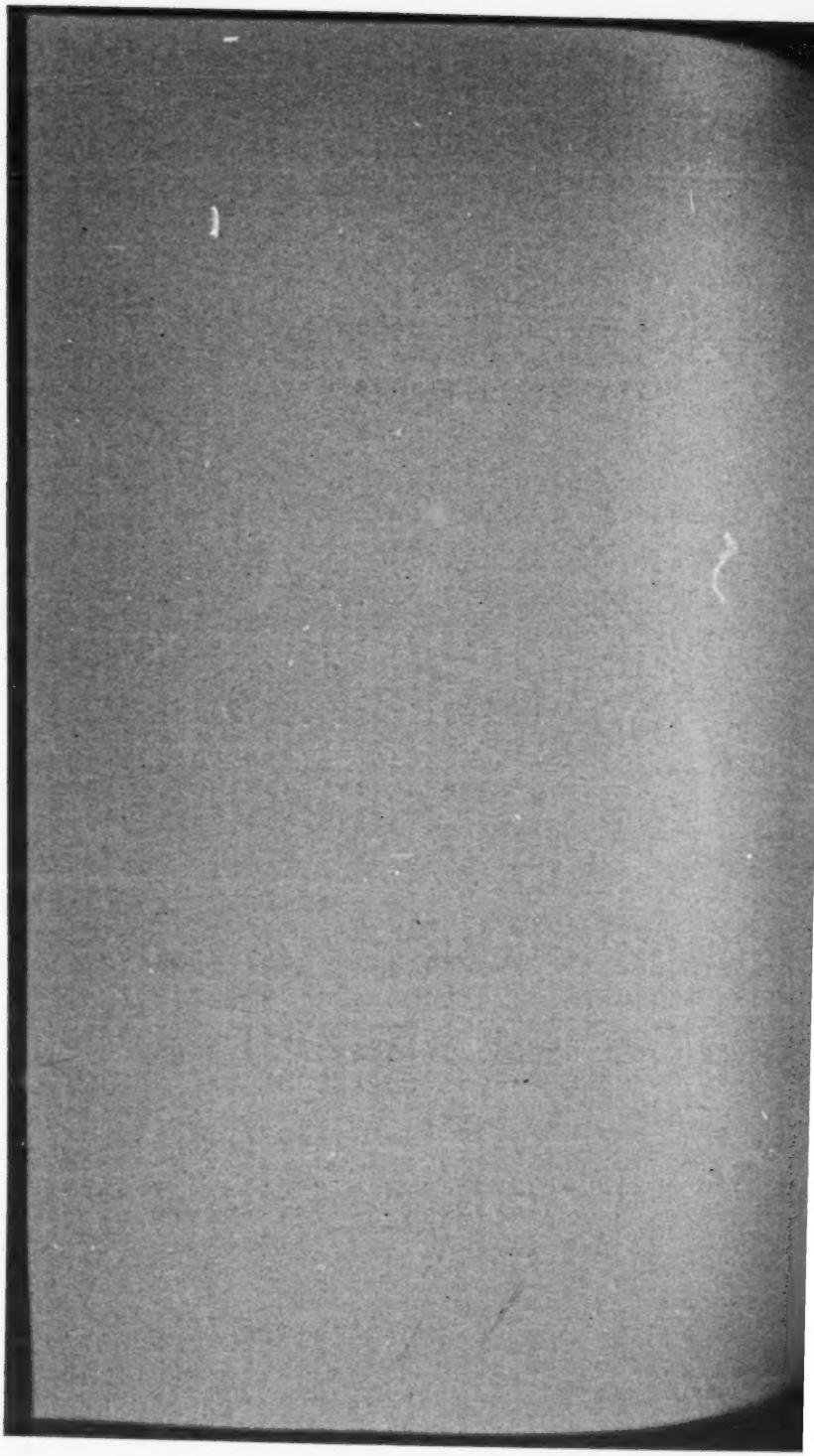

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SUPPLEMENTAL BRIEF IN BEHALF OF THE PLAINTIFFS IN ERROR.

As stated in the oral argument, the defendants in error urge two grounds, why the intervention of the Drainage Commission should be dismissed, as not showing any legal

interest on its part in the subject matter of the suit. These grounds are as follows :

1st. That the acts 114 of 1896, and 63 of 1898, are unconstitutional and void, as being in conflict with act 110 of 1890, adopted as an amendment of the Constitution of 1879, in 1892, in so far as said acts attempt to apply and dedicate, the "Permanent Public Improvement Fund" created by section 8 of the act 110 of 1890, to drainage purposes, and in so far as they attempt to vest the Drainage Commission of New Orleans, with the control and disposition of said fund. This contention is based upon the theory, that as section 10 of act 110 of 1890, made part of the constitution in 1892, provides that the fund shall be used exclusively for permanent public improvements, and that the city council shall have the right to pass ordinances, payable out of this fund, it was incompetent for the legislature to take the control of that fund out of the hands of the city council, and vest it in the Drainage Commission; therefore, as said acts were unconstitutional, the Drainage Commission had no right to the fund and no real interest in this suit.

2d. That as act 110 of 1890, contemplated an issue of $10,000,000 of Constitutional Bonds, even admitting the validity of said acts of 1896 and 1898, yet as the Drainage Commission was interested only in the surplus of the proceeds of the 1 per cent. tax, after payment of the annual interest charge on an issue of bonds authorized by the act of 1890 and other fixed charges, it had no cause of complaint until and unless, the proposed issue caused that limit to be exceeded.

As to the first ground of objection urged by the defendants in error, we concede that if the legislature had no power to apply the fund in question to drainage purposes, and to put the disposition and control of said fund in the hands of the Drainage Commission, as attempted by acts 114 of 1896 and 63 of 1898, then the Drainage Commission had no interest to sustain its right of intervention, and its petition of intervention should be dismissed for want of interest.

We desire first to call the court's attention to the fact, that nowhere in the pleadings, did the defendants in error specially set up the unconstitutionality of the acts in question. (See answer of defendants in error to intervention of Drainage Commission, Record, page 42.) And under the doctrine of State *vs.* St. Romes, 26 La. Ann. Reps., 753, the court should not declare an act unconstitutional, unless the distinct issue is raised and the reasons placed upon record in the pleadings. We are clear that the mere denial of interest in the Drainage Commission in the subject matter of the suit, is not sufficient to raise this question. The supreme court of Louisiana evidently took this view, as it did not directly consider the point; but that court was evidently of the opinion, that this contention of the defendants in error was not well founded, for it will be seen that by its final decree (Rec., page 125) the right and interest of the Commission to intervene, was expressly recognized and declared. This result could only have been reached by the court upon the assumption that said acts were in this respect valid.

We feel assured that this court will follow the decision of the State court on this point, in view of the fact that the right

of intervention in this suit is a matter to be determined exclusively by Louisiana statutes and practice.

Cornell *vs.* Fiske, 136 U. S., 152, 174.

In re Duncan, 139 U. S., 449.

But, be this as it may, we submit that an independent consideration of this question, will lead this court to the conclusion that the application, dedication, and control of said fund, as attempted by said acts of 1896 and 1898, were a valid exercise of legislative authority.

It may first be noted, that at the time the act 110 of 1890 was adopted, the city of New Orleans was under the domain of its charter (act 20 of 1882), which vested all legislative functions in a city council of thirty members, and more particularly the control and disposition of all public funds accruing to the city for its general municipal purposes. It would therefore be expected, when this fund was dedicated to permanent public improvements, that the proper body then existing, to whom its control and administration should be given would be the city council.

The dedication was to the purpose, and not to the instrumentality by which the purpose was to be accomplished. The object to be attained was the use of the surplus for public improvement, and not its permanent control and administration by the city council.

An examination of section 10 of act 110 of 1890 shows that the "Permanent Public Improvement Fund" was dedicated to the construction of permanent public improvements. This dedication was further sanctified by incorporation into the constitution in 1892, and by the declaration that all the substantial provisions of said act

were to constitute a contract between the city and its bondholders. The question now is, whether the mere mention of the agency then authorized by law to administer the public funds of the city as the one by which this fund was to be administered, constituted the city council, as then organized and existing, a permanent constitutional body, whose grasp on this fund could not be released save only by a constitutional enactment. To hold that such was the case would be to deprive the legislature of its generally recognized control of municipal corporations created by it, whenever incidentally the existing form of government of any city might be mentioned in the constitution. The power of the legislature over municipal corporations created by it, is so universally recognized that the court would not be justified in assuming such an intention on the part of the framers of the constitution, unless such intention was manifested in terms so plain and unmistakable, that no other conclusion could be reached. Far from such a construction of this article being possible under the language used, when we consider article 254 of the constitution of 1879, which was then in existence, and which must be read with the law here considered, expressly authorized the legislature to abolish the charter of the city of New Orleans and remit its inhabitants to any form of government that it might see fit, such a construction would be absurd. As a matter of fact, the legislature, in 1882, did abolish the then existing charter of that city granted in 1870, and again, in 1896, abolished the charter of 1882 and substituted in place of the city council of thirty members, which was in existence in 1890, when said act was passed, a council of seventeen members, with radi-

cally different powers and duties; so that today the body referred to in said act of 1890 is no longer in existence.

In support of our position, that it was competent for the legislature to make the application and dedication of this fund as attempted by said acts of 1896 and 1898, and to vest the Drainage Commission with its control and administration, we refer the court to the following authorities:

Mayor, etc., *vs.* State *ex rel.* Board, 15 Maryland, 376, 428, 429.

Boyd *vs.* Chambers, 78 Ky., 140.

City of Paterson *vs.* Society, etc., 4 Zabriskie (24 N. J. L.), 385.

People *vs.* Hurlbut, 24 Mich., 44, 73.

Rutgers *vs.* Mayor, 42 N. J. L., 51.

People *vs.* Draper, 15 N. Y., 561.

State *vs.* Morrell, 2 Wend. (N. Y.), 563.

People *vs.* Albertson, 55 N. Y., 50.

The purpose for which the fund can be used is everything; the instrumentality through which it is to reach the purpose is nothing. The former is essential; the latter a mere convenience.

It has been held in Kentucky that a provision of the State constitution as to courts and the election of judges was never intended to take from the legislature the power to enlarge the boundaries of towns in existence at the time of the adoption of the constitution, or to alter or abolish the courts therein, when the law-making power should deem it to the benefit of the inhabitants.

Beach on Public Corporations, section 718.

In Boyd *vs.* Chambers, 78 Ky., 140, the right to office of a city judge, elected in accordance with the terms of a new charter of a city, reincorporated, was sustained over the claims of one elected, when the provisions of the constitution governed the election of city judges.

See also Rutgers *vs.* Mayor, etc., of New Brunswick, 42 N. J. L., 51.

The fact that the constitution of a State mentions and recognizes a particular municipal corporation does not make the charter of a corporation a constitutional charter, so as to place it beyond the reach of the legislative power.

Beach on Public Corporations, section 719.

Mayor, etc., of Baltimore *vs.* State, 15 Md., 376.

The question, at most, is whether or not the legislature had authority to take away from the council whatever power was given to it by section 10, conceding the latter to be part of the constitutional amendment of 1892.

This power of the council pertains to the city, not in its proprietary or private, but in its governmental or legislative, or public character, the nature of which is not changed by the mention which is made of it in the constitutional amendment of 1892; over the political powers of a municipal corporation, the authority of the legislature is, in the nature of things, supreme and without limitation, unless that be found in some peculiar provision of the constitution.

Dillon on Municipal Corporations, section 66.

Even where the rights of private parties under a contract to fund the floating indebtedness of a municipality are fully

protected by the Federal and State constitutions, a change in the method of levying taxes, not affecting or impairing the security of the creditors, is deemed invalid.

Dillon on Municipal Corporations, section 69.

The act of the legislature, establishing a board of public works, cannot be held invalid, on the ground that it divests the old board or city corporation, or common council, of the title to property and transfers it to, or vests it in, such a board of public works.

People *vs.* Hurlbut, 24 Mich., 44–73. Particularly the opinion of Christiancy, judge.

The fact that the constitution mentions and recognizes a municipal corporation does not make the charter of the city a constitutional charter, so as to place it beyond the legislative power.

Mayor, etc., of Baltimore *vs.* State, 15 Md., 376 (74th Am. Dec., 572).

People *vs.* Draper, 15 N. Y., 561.

State *vs.* Morrell, 21 Wend., N. Y., 563.

People *vs.* Albertson, 55 N. Y., 50.

Paterson *vs.* Society, etc., 24 N. J. L., 385.

People *vs.* Hurlbut, 24 Mich., 44 (19th Am. Rep., 103).

The political powers conferred upon a corporation for the local government of a place are not vested rights as against the State, and where there are no constitutional restrictions upon the action of the legislature, it has absolute control to create, change, modify, or destroy them at pleasure.

American and English Encyclopedia, vol. 15, p. 976.

Public or municipal corporations are established for the local government of towns or particular districts. The special powers conferred on them are not vested rights as against the State, but, being wholly political, exist only during the will of the legislature. Such powers may at any time be repealed or abrogated by the legislature, either by a law operating on the whole State, or by a special act altering the powers of corporations.

Sloan *vs.* State, 8 Blackf. (Indiana), 51.

The creation of municipal corporations, and the conferring upon them of certain powers and subjecting them to corresponding duties, does not deprive the legislature of the State of that general control over their citizens which was before possessed. It still has authority to amend their charters, enlarge or diminish their powers, extend or limit their boundaries, consolidate two or more into one, overrule their legislative action whenever it is deemed unwise, impolitic, or unjust, and even abolish them altogether in the legislative discretion, and substitute those which are different. The rights and franchises of such a corporation, being granted for the purposes of government, can never become such vested rights as against the State that they cannot be taken away; nor does the charter constitute a contract in the sense of the constitutional provision, which prohibits the obligation of contracts being violated. Restraints on the legislative power of control must be found in the constitution of the State, or they must rest alone in the legislative discretion.

Cooley's Constitutional Limitations, pages 228, 229.

In conclusion, if it was competent for the legislature to abolish the then city council absolutely, *a fortiori* was it competent for it to deprive it of the control of this particular fund, and vest its administration in another public body.

As to the second objection, that the surplus dedicated to the purposes of the Drainage Commission meant that portion of the proceeds of the 1 per cent. tax, left over after providing for the annual charges on a basis of $10,000,000 of bonds, and that unless and until the issue exceeded that sum, the Drainage Commission had no cause to complain, we desire to first direct the Court's attention to the fact, that the meaning of these words was to be found exclusively in the acts of 1890, 1896, and 1898 and the amendment to the constitution of 1892, all of which were local statutes, and then to the very full discussion of this question in the opinion of the supreme court of Louisiana.

Concerning this question that court said (Rec., page 113):

"We do not take the same view that relators do as to what was meant by and intended to be conveyed by the 'surplus' referred to by act 110 of 1890, act No. 114 of 1896, and the constitutional amendment of 1892. We think the lawmakers intended that any portion of the one per cent. tax provided for in act 110, not needed for the payment or retirement of the particular bonds or claims therein specially provided for as to payment or retirement, should constitute the surplus of the tax; that it was not contemplated when these laws were passed, or the amendment of 1892 adopted, that in order to exhaust any portion of the ten millions of dollars originally expected to be needed to pay the existing bonds and the existing claims therein specially enumerated which might not be necessary for that purpose, new classes of claims should or would be thrown under the provisions of the original funding law.

"We think the 'surplus,' was intended to connect at once, and follow immediately behind, as to its appropriation the amount beyond that, actually needed to carry out the plan as originally mapped out and planned. The surplus was provisionally ascertained each year, in a manner particularly specified to be readjusted; the next in a manner also particularly specified. All the surroundings and circumstances connected with the legislation, negative the idea that the surplus mentioned, was to be only any surplus over ten millions of dollars which might result from the collection of the one per cent. tax" (Rec., page 113).

* * * * * * *

But, independent of this, we confidently submit that there is no just foundation for the contention of the defendants in error.

By section 8 of the act of 1890, out of the proceeds of the 1 per cent. tax there were to be paid:

1. The annual interest on all outstanding constitutional bonds that had been issued by the Board of Liquidation for the specific purposes mentioned in the act.

2. The annual interest on all other outstanding unmatured bonds not retired under the provisions of the act.

3. The annual premiums and allotments of the premium bonds.

4. The deficiency, if any, in the interest of former years.

5. The annual allotment for a sinking fund, after the year

1925, to retire each year the amount of bonds fixed by section 9.

6. The expenses of the board.

After all these charges had been paid or provided for, the amount remaining constituted and was designated as, "the surplus of the 1 per cent. tax." So that from year to year this surplus was ascertained and fixed. It accrued and was determined each year from the very inception of the plan. It was more or less, according to the amounts required for the annual charges. It will be greatly diminished after the year 1925 by the demands of the sinking fund; but, such as it was, it was fixed each year (and as so fixed was dedicated to the purposes mentioned in section 10) upon the basis of the amount of the constitutional bonds then actually outstanding, and regardless of the fact that in future years the amount of the outstanding ~~construction~~ constitutional bonds would from time to time be increased.

Such was the status under the operations of the act of 1890, when the drainage act of 1896 was passed; and the conclusion is inevitable that when the legislature dealt with that surplus by the act of 1896, it meant and intended, that the surplus as fixed and determined year by year by the method then in vogue, was the fund which it dedicated to the purposes of the Drainage Commission. If a contrary intention existed, would it not have been manifested clearly, by the use of language showing that the method theretofore in vogue, in determining the amount of the surplus, was to be disregarded, and a method based upon a consideration of the full issue of $10,000,000 of bonds adopted? The lan-

guage of section 3 of act 114 of 1896, dedicating this surplus, shows clearly to our minds that the surplus dedicated was to be determined upon the basis of the conditions actually existing each year, in accordance with the terms of the act of 1890.

Furthermore, when the act of 1896 was adopted, the idea of charging the funds accruing from the 1 per cent. tax, with the payment of the debts of the defendants in error, had occurred to no one and was not contemplated. Can it be supposed, then, that the legislature intended that only a portion of the permanent public improvement fund should be dedicated to drainage, and that the balance of that fund was to continue to be used and expended by the city council? In other words, that for drainage purposes the calculation of the surplus was to be made on an issue of $10,000,000, and for other permanent improvements on the issue actually outstanding? Manifestly it intended that the entire fund, as ascertained and fixed each year under the terms of the act of 1890, was to be devoted to drainage. The legislature evidently recognized that the entire fund was necessary for this great work, and this fact is supported by the testimony in the record.

We submit, therefore, that the opinion of the supreme court of Louisiana was correct in this respect.

Finally, we submit that, as the entire permanent public improvement fund as defined and fixed each year, in accordance with the provisions of act 110 of 1890, was dedicated and consecrated to the obligations of the Drainage Commission, and as that body, long before the adoption of the constitution of 1898, had contracted debts upon the faith of that

dedication, and as, moreover, that entire fund is necessary to pay same, it was not competent for the State by legislative or constitutional enactment to take away any part of same and give it to relator.

BRANCH K. MILLER,
Attorney for Board of Liquidation of the City Debt.

WALKER B. SPENCER,
Attorney for Drainage Commission.
Plaintiffs in Error.

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OCTOBER TERM, 1899.

No. 377. (369.)

DRAINAGE COMMISSION OF NEW ORLEANS,
PLAINTIFF IN ERROR,

vs.

MISS LUCRETIA B. WILDER ET ALS., DEFENDANTS IN ERROR.

Brief of Plaintiff in Error on Motion to Dismiss or Affirm.

WILLIAM WIRT HOWE,
For the Drainage Commission of New Orleans, Plaintiff in Error.

OCTOBER 30, 1899.

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Miss LUCRETIA B. WILDER ET ALS., DEFENDANTS IN ERROR.

Brief of Plaintiff in Error on Motion to Dismiss or Affirm.

The defendants in error have moved to dismiss or affirm.

It does not seem to us that there is any color for the motion to dismiss, nor any reason for motion to affirm.

An inspection of the record will show that the plaintiff in error, The Drainage Commission of New Orleans, specially claimed in its pleadings (Transcript, MS. p. 36) and its assignments of error (MS. p. 143) in the State court its rights, privileges, and immunities:

(*a.*) Under the clause of the Constitution of the United States which forbids a State to pass any law impairing the obligation of contracts.

(*b.*) Under the clause of the fourteenth article of amendment which forbids a State to deprive any person of property without due process of law.

The case involves, and has involved from the beginning, important Federal questions, including the construction of the above-named clauses of the Constitution of the United States and the asserted invalidity of articles 315, 316, and 317 of the Louisiana constitution of 1898, as sought to be enforced in the State court; and these questions have been decided against the Drainage Commission of New Orleans, plaintiff in error. A fund belonging to the plaintiff in error by a consecration which antedates the State constitution of May 12, 1898, and which had been devoted to large contracts for drainage work prior to that constitution, is sought to be invaded and reduced by this State legislation in favor of relators below, in order to pay sundry debts of the city of New Orleans, which as debts of that city did not exist by its assumption until July 26, 1898, a date long after the contracts of the Drainage Commission, based on its consecrated fund, had been made, and its bonds largely sold to pay these contracts.

If our writ of error be not good and worthy of the same discussion accorded to other cases in this court, we are profoundly mistaken in our views of the law of such a subject.

SOME HISTORY OF THE CASE.

By the constitutional amendment proposed in Louisiana, by act 110 of 1890, and duly adopted in 1892, an issue of constitutional bonds of the city of New Orleans, not exceeding $10,000,000, was authorized for certain specific purposes and for no other purpose. These purposes are specified in section 1 of the act. They are—

"For the purpose of retiring the now existing, valid outstanding bonds of the city of New Orleans, including the

bond certificates or bonds issued under the act of the legislature 58, 1882, and to retire judgments hereafter rendered against the city on floating debt claims prior to 1879, entitled to be funded under act 67, of 1884."

The application of these new bonds is described as follows:

"The said bonds shall be applied by the said board to the retirement of the said outstanding bonds and judgments by the sale of said constitutional bonds and application of the proceeds of sale of the Board of Liquidation to pay or purchase said outstanding bonds and judgments, or by exchanging the said constitutional bonds for bonds, on the terms and in the mode prescribed by the legislature."

To provide for the carrying out of this plan it is further declared that—

"For the payment of interest and principal at maturity of constitutional bonds and other outstanding bonds not retired under this amendment, and for the payment of the annual allotments and premiums of the premium bonds of said city, the said city is hereby authorized and directed to levy annually and until the full payment of said bonds, a special tax of one per cent. on all the real and personal property of the city."

The proceeds of said tax to be applied by the Board of Liquidation—

"To the payment of the interest and principal at maturity of said constitutional bonds and outstanding bonds not retired and to the payment of the allotments of premium bonds and premiums extant in the hands of holders."

It is further provided as follows:

"That said tax is hereby declared to be the contract right of the holders of all said bonds, and the exemption of said constitutional bonds from taxation by the city of New Orleans and State of Louisiana is hereby recognized and declared, and after the payment of all the annual interest on

said constitutional bonds and bonds not retired and the payment of said annual allotments of premium bonds and premiums extant in the hands of holders, and after making provisions for a sinking fund, at such time and of such an amount as the legislature prescribes, the surplus of said one per cent. (1%) shall be disposed of *as prescribed by the legislature.*"

It is further declared that—

"The act passed at the present session, No. 36, entitled An act to carry into effect the constitutional amendment, etc., is hereby approved and confirmed in all its parts as a contract between the city of New Orleans and the holders of the aforesaid constitutional bonds, premium bonds, and other bonds outstanding not retired as aforesaid."

This act, called No. 36, which was probably its journal number, is appended to the constitutional amendment at the foot of page 145 of the Acts of 1890.

Section 2 of the constitutional amendment authorizes and empowers the city of New Orleans to examine into and assume the payment of the claims or obligations of the board of school directors for the city and parish of New Orleans due for the years 1880, 1881, 1882, 1883, and 1884. This provision emphasizes the plain distinction between an obligation of the board of school directors and an obligation or debt of the city of New Orleans, a distinction which will be alluded to again; and this section 2 does not at all authorize the use of the constitutional bonds to pay any obligations of the board of school directors, whether assumed by the city or not. On the contrary, the affirmations of this section are pregnant with a denial of the rights to use the bonds in such a way, it being manifest that claims or obligations of the board of school directors are to be assumed and paid in some other way, and, as a matter of fact, this has been done, as shown in this record.

Proceeding now to the act appended to the constitutional amendment, we find in section 1, page 146, another and

equivalent statement and limitation of the use to be made of the constitutional bond as follows:

"That in order to provide for the retirement of the outstanding bond indebtedness of the city of New Orleans and such other indebtedness as under existing laws is or becomes entitled to be funded into any series of bonds, always saving and excepting, however, the bonds, known as premium bonds, the city of New Orleans is authorized and empowered and directed to issue bonds to the amount of $10,000,000; nine thousand of which bonds shall be for one thousand dollars each and two thousand of which shall be for $500 each, to be known as the constitutional funds of the city of New Orleans, dated July 1st, 1892, payable fifty years after date with the right to call by lot not more than $700,000 per annum after the year 1925," etc.

It is manifest from this provision that it does not enlarge the limitations of section 1 of the constitutional amendment itself as to the objects to which the bonds were to be solely devoted. On the contrary, the issue is to be confined to the retirement of outstanding bond indebtedness and other indebtedness fundable in bonds under existing laws—that is to say, to bonds outstanding or indebtedness entitled to be funded in bonds *prior to July, 1890*. Passing on, we find sections 8, 10, and 16 of the appended act, called 36, to be as follows:

"SECTION 8. *Be it further enacted, etc.*, That out of the proceeds of said one per cent. per annum tax, beginning in the year 1892, the said Board of Liquidation shall annually provide for the carrying of the premium bond plan, the payment of interest upon the bonds herein authorized to be issued, and of the interest upon all other outstanding interest-bearing bonds of the city of New Orleans, and after the year 1925, for the annual sinking fund necessary to call and retire the number of bonds provided for in section 9 of this act. After making, in each year, the provisions above required, and after deducting the expenses incurred by said board, and after paying any deficiency in the interest fund of any previous years, *one-half of the surplus* of said tax

shall be passed to the credit of a special fund, to be known as the '*permanent public improvement fund*,' to be disposed of as hereinafter provided; the other half of said surplus shall be paid over to the school board of the city of New Orleans, in addition to any fund appropriated by said city out of other funds, to be used in the maintenance and support of the public schools in said city."

"SECTION 10. That the permanent public improvement fund, above provided for, shall be used exclusively for the construction of permanent public improvements in the city of New Orleans, such as levees, *canals*, *drainage stations*, pavements, public buildings, public parks and bridges, and all ordinances passed by the city council to be paid out of this fund shall first be approved by the said Board of Liquidation, who shall not draw any checks on said fund unless they are convinced, upon proper inquiry, that said ordinance covers the construction of a permanent public improvement, within the purview of this act. The true intent and meaning of this clause is not to give said board any authority to say to what permanent public improvement any fund shall be applied, but only to see that said funds shall be applied exclusively to the construction of improvements that are permanent."

"SECTION 16. That all of the substantial provisions of this act are hereby declared to be a contract between the State of Louisiana, the city of New Orleans, the tax-payers of said city, and each and every holder of said constitutional bonds."

By the concluding portion of article 254 of the constitution of 1898 it is provided that one half of this surplus which goes to the public schools, shall not be disturbed, but that the schools shall still continue to receive the same, a provision which will be referred to again.

DRAINAGE COMMISSION OF NEW ORLEANS.

By act 114 of 1896 the Drainage Commission of New Orleans is established as a board or body politic, a large majority of its members consisting of city officials.

By the third section of that act the portion of the fund

in the hands of the Board of Liquidation, under the provisions of sections 8 and 10 of the act No. 110 of 1890, devoted to *permanent public improvements*, accruing to such works from and after January 1, 1898, is dedicated and applied to the purpose of *drainage* of the city of New Orleans, being one of the principal purposes catalogued in section 10 of the act of 1890.

By section 4 the commission is endowed with full power to control and execute the drainage of the city of New Orleans and to carry out substantially the plan for such drainage which had been adopted by the council of said city July 10, 1895.

By the sixth section, in order to do the work of drainage speedily and on an extensive scale, so as to benefit all parts of the city as soon as possible, the commission is authorized to issue bonds to an amount not exceeding $5,000,000, and all moneys and funds dedicated and applied by the act to the purpose thereof are consecrated to the payment of the principal and interest on said bonds.

By section 7, all the provisions of the act respecting the dedication and application of the funds and moneys are constituted a contract with the holder or holders of the bonds.

On June 21, 1897, in the case of The State *vs.* Flower, 49th Annual, 1199, the supreme court of Louisiana decided that the Drainage Commission was a lawful body, which the legislature had the power to create as an instrumentality for the drainage of the city, and on the faith of this decision contracts were made and bonds issued, as hereinafter set forth.

After this decision had been rendered and from about August, 1897, down to a time just prior to the adoption of the constitution of 1898—that is to say, May 12, 1898—on the faith of the act 114 of 1896 and the above decision of this court, the Drainage Commission entered into *contracts* to the amount of nearly $2,000,000, which are all set forth in the testimony and concerning which there is no dispute,

and of the work so contracted for a very large amount remains still to be done and paid for, which, as the testimony shows, must be paid for in cash from time to time as the installments are completed. The testimony also shows that no proceeds have yet been received by the Drainage Commission from the permanent public improvement fund under act 110 of 1890, but a certain amount is expected to be received during the year 1899. In order to speed the construction of the work, bonds were prepared and provided under act 114 of 1896, bearing date November 1, 1897, and of these $500,000 were sold at premium to *bona fide* purchasers in June, 1898. By act No. 63, approved July 9, 1898, the issue of bonds was limited to $1,500,000, and it was declared that all moneys and funds dedicated and applied for the purposes of drainage by the act 114 of 1896, as amended by act 63, were primarily consecrated to the payment of the interest on said bonds and the redemption of the principal, and that all of the provisions respecting the dedication and application of funds and moneys should constitute a contract, primarily, with the holder or holders of said bonds, and also with each and every person or corporation that might have entered into contracts with the said commission, and the obligation of said contract should not be impaired.

It appears without dispute that in 1897, when the bulk of the contracts were made, it was understood that drainage bonds would be thus issued and sold to meet the contracts. (See testimony of Walmsley, Mullan, and Freret, MS. transcript.)

We call especial attention to the foregoing dates, from which it will be seen that the contracts made by the commission antedate the adoption of the constitution of 1898; that when they were made it was understood that drainage bonds would be issued; that the bonds were prepared and dated November 1, 1897, and that the assumption by the city of New Orleans of the obligations of the school

oard, upon which this suit is instituted, *did not take place ntil July 26, 1898*—that is to say, long *after our contracts ere made and bonds issued and sold, and after the amending t of July 9, 1898, had been adopted by the legislature.*

It cannot be disputed, as a matter of fact, that all the unds consecrated by the drainage act 114 of 1896 are bsolutely necessary to meet the contracts made, as bove stated, and the principal and interest of bonds already ssued. The testimony of Mr. Walmsley on this point is lear and uncontradicted. It further appears as a matter of act that if the demands of the relators are allowed $115,000 f bonds will be issued under act 110 of 1890, on which the nnual interest charge will be $4,600. The surplus coming, herefore, to the permanent public improvement fund and edicated to drainage purposes would be reduced by at least he sum of $2,300 a year for not less than forty years. But nasmuch as under the operations of article 254 of the constitution of 1898, quoted above, the half of the surplus going o schools is specially protected, the whole of this impairment of $4,600 a year will fall upon the half of the surplus coming to the Drainage Commission. It will be seen at once, as a matter of mathematics, that this impairment might amount to $170,000 or more, and this in addition to claims of sinking fund.

The demand of the relators is based upon articles 315, 316, and 317 of the constitution of 1898, which took effect May 12, 1898. They claim that under article 317 the Board of Liquidation should be ordered to sell enough of the bonds prepared under the act of 1890 to pay their certificates, and the court of first instance so ordered. The affirmance by the supreme court of Louisiana, notwithstanding the theories of its opinions, leads to the same result.

The Board of Liquidation sets up various important defenses which have been discussed by its counsel and will be presented in its brief in this court.

The Drainage Commission of New Orleans intervened in

the case and joined the defense in resisting the demand of their relators. Its case was fully proved as a matter of fact. From the reasons given by the judge of the court of first instance it appears that it simply declined to declare the articles 315, 316, and 317 unconstitutional. It seemed to think also that the Drainage Commission had no legal interest in the premises, and therefore dismissed its intervention.

The Board of Liquidation and the Drainage Commission each took an appeal to the supreme court of Louisiana, and the Drainage Commission, following the line of its pleadings, filed an assignment of errors in accordance with Louisiana practice. The supreme court of Louisiana at first rendered a judgment of affirmance, but on application for rehearing modified it so as to recognize the right of the Drainage Commission to intervene; but, nevertheless, the judgment of the court of first instance was so far affirmed as to order the issue and sale of the bonds, as demanded by relators, and thus impair the fund of the Drainage Commission to the extent heretofore pointed out; thereupon the Drainage Commission, as well as the Board of Liquidation, took its writ of error to bring its case before this court. The transcript of record containing both writs of error and the respective assignments of error made therewith by both plaintiffs in error has been duly filed, but up to this date no portion of the transcript has been printed; and there being two writs of error, there are two cases appearing on the docket, that of the Board of Liquidation being numbered 369 and our proceeding being numbered 377.

For many details in regard to the questions involved, and especially in regard to the opinions rendered by the supreme court of Louisiana, we beg to refer to the brief of the learned counsel for the Board of Liquidation, Mr. B. K. Miller.

14174

ARGUMENT.

1.

The Drainage Commission of New Orleans had a plain and large interest and duty to intervene in this cause, and to protect a fund belonging to it, and to protect the contracts it has made with reference to such fund (State *vs.* Pilsbury, 31 Louisiana Annual, 1, 8).

In the first place, the surplus coming to the Drainage Commission from the operations of the act of 1890 belongs to it, and it has the same right to protect the fund that a private person has to protect his property from illegal seizure or conversion.

The fund is specially dedicated to an important purpose, and large contracts have been made and bonds issued upon the faith of this fund, and it is the duty of the Drainage Commission, in its fiduciary capacity and on plain general principles, to protect this fund from impairment, whether such impairment be great or small. In the case of Florida against Georgia, 17 Howard, 478, Mr. Caleb Cushing gave an excellent definition of intervention, which he saw was derived from the civil law, as follows:

"Intervention is the generic designation in the civil law of the various technical processes by which, when a suit is pending between two parties, a third party is allowed to interpose for the assertion of some collateral, implicit or ulterior right, adverse to that of either or both of the others, or to defend a responsibility involved in the issue of the controversy."

It was claimed in argument below that the drainage act of 1896 is unconstitutional, as a matter of State law, so far

as it undertakes to place the permanent public improvement fund under the administration of the Drainage Commission.

But the supreme court of Louisiana held the Drainage Commission entitled to intervene and protect this fund, and manifestly considered the drainage laws constitutional. We may refer, however, to State *vs.* Flower, 49 Louisiana Annual, 1199. This being a State question, we need not trouble this court by discussing it.

But, as Mr. T. J. Semmes, the late distinguished leader of our State bar, gave an opinion on this point, we pray leave to print it here as follows:

NEW ORLEANS, *Nov.* 15, 1898.

R. M. WALMSLEY, Esq.,
President Drainage Commission of New Orleans, City.

DEAR SIR: You have asked for my opinion upon the following question:

"Whether the General Assembly had the power by the act No. 114 of 1896, to turn over to the Drainage Commission of New Orleans the portion of the surplus funds devoted to permanent public improvements in the city of New Orleans, arising from the operation of act No. 110 of 1890, and the constitutional amendment of 1892."

Section 1 of act 110 of 1890 contemplates a surplus of the one per cent. tax, and declares that the same shall be disposed of "as prescribed by the legislature."

The act which is appended to the constitutional amendment proposed by act 110, and which is styled No. 36, by section 8 places one-half of the surplus of said tax to the credit of a special fund to be known as "a permanent public improvement fund," to be disposed of "as hereinafter provided," page 150.

The tenth section declares as follows:

"*Be it further enacted, etc.*, That the 'permanent public improvement fund,' above provided for, shall be used ex-

clusively for the construction of permanent public improvements in the city of New Orleans, such as levees, canals, drainage stations, pavements, public buildings, public parks and bridges, and all ordinances passed by the city council to be paid out of this fund, shall be first approved by the said board of liquidation, who shall not draw any check on said fund, unless they are convinced, upon proper inquiry, that said ordinance covers the construction of a permanent public improvement within the purview of this act. The true intent and meaning of this clause is not to give said board any authority to say to what permanent public improvement said fund shall be applied, but only to see that said funds shall be applied exclusively to the construction of improvements that are permanent."

It appears that drainage canals and drainage stations are especially recited by the legislature as permanent public improvements, and it will further be noticed that in 1895 the city of New Orleans had adopted a drainage plan by an ordinance of July 26, 1895.

By the fourth section of act 114 of 1896 the legislature adopts this plan, and directs the Drainage Commission of New Orleans to carry it out.

By the second section of act 114 the above-mentioned surplus accruing to the public works of that kind is dedicated and applied to the purposes of the act for carrying out this plan. By the sixth section of the same act, 114, the Drainage Commission, in order to do the work speedily and on the extensive plan, is authorized to issue and dispose of its negotiable bonds, and this section declares that all moneys and funds dedicated and applied by this act to the purposes thereof are consecrated to the payment of the principal and interest on said bonds; and by section 7 of same act the provisions respecting the dedication and application of funds and money are declared to constitute a contract with the holder or holders of said bonds.

By the act 63 of 1898 this issue of bonds by the Drainage Commission is limited to $1,500,000, and the provisions

of the act in regard to the dedication of funds are declared to be a contract not only with bondholders, but with all persons having contracts with the Drainage Commission.

In the case of State *vs.* Walter C. Flower and others, 49th Annual, 1199, the attorney general directly questioned the right of the Drainage Commission to exist, but the supreme court decided that the act was valid under the police power of the legislature to provide for the efficient drainage of New Orleans; and further held that article 253 of the constitution of 1879, securing to the citizens of New Orleans the right of appointment of certain officers, did not divest the State of the police power to protect the public health by the system of drainage set forth in the act.

It seems to me that the right of the legislature thus to dedicate the surplus fund in question to the work of drainage by act 114 of 1896 is beyond dispute. The provisions above quoted from the act 110 of 1890, by the operation of which the fund is created, whether they be looked upon as statutory or constitutional, offer no objection to this exercise of power by the General Assembly. By the first section of the act 110, as already quoted, the surplus is to be disposed of "as the legislature shall direct." By section 8 of the same act the half of this surplus fund is to be "passed to the credit of a permanent public improvement fund." By the tenth section it is to be devoted to the construction of permanent public improvements in the city of New Orleans, of which drainage stations and canals are given as examples. The Board of Liquidation is directed not to pay for any work which is not a permanent public improvement, and all ordinances which may be passed by the city to be paid out of this fund shall first be approved by the Board of Liquidation. But there is nothing in this language which could deprive the General Assembly of the political right to establish a Drainage Commission as composed in the act 114 of 1896, and direct it to use this fund for the permanent public improvement known as the drainage plan.

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Especially must this be true when it is seen that the drainage plan adopted by the act 114 of 1896 is the same plan of permanent public improvement devised at the suggestion of the council, adopted by it in July, 1895, and manifestly payable out of that fund.

Courts have never looked with favor upon any attempt to fetter the power of the General Assembly in dealing with municipal corporations as to matters which are public and political. Under the constitution of 1879 the General Assembly had special authority given to it, by excess of caution, to abolish the city government and remit the inhabitants to a new form of government. The recognition, by section 10 of the act 110 of 1890, of the fact that the common council for the time being would pass ordinances in respect to this permanent public improvement fund could not prevent the legislature from adopting the city's plan and establishing a commission to carry it out, and giving to that commission the administration of the fund. (Police Jury *vs.* Shreveport, 5th Annual, 661; People *vs.* Hurlbut, 24 Mich., 44; Pennie *vs.* Reis, 132 U. S., 465; E. Hartford Bridge Co. *vs.* Hubbard, 10 Howard, 533, 534).

The right "vested" by the act of 1890 was vested in a "permanent public improvement fund" (Fisher *vs.* Board, 48th Annual, at page 1079). But the right is not vested in any particular person or political body, and the legislature at any time could create a new body to administer the fund for permanent public improvements (49th Annual, 1199).

Very truly yours,

(Signed) T. J. Semmes.

II.

It appears by the testimony and as a matter of calculation that by the execution of articles 315, 316, and 317 of the constitution of 1898, as proposed by the relators and by the State court, the surplus coming to the permanent public

improvement fund will be impaired by at least $180,000—say, $4,600 a year for some forty years. This impairment is a very serious one, especially as the testimony shows that every cent of the permanent public improvement fund is needed to carry out the contracts made by the Drainage Commission prior to May 12, 1898, and to pay the drainage bonds which were issued and sold before the city assumed the claims of the relators. We repeat that the Drainage Commission had made contracts amounting to nearly $2,000,000 and had issued and sold bonds to pay such contracts to the amount of $500,000 before the city became indebted to relators.

It may be added also that the amount of impairment is not essential. The Constitution of the United States does not declare that a State "shall not pass any law impairing the obligation of contracts to a very great extent." The prohibition is against the impairing of such obligations at all. In Planters' Bank against Sharp, 6th How., page 327, the court said:

"One of the tests that a contract has been impaired is that its value has by legislation been diminished. It is not, by the Constitution, to be impaired at all. This is not a question of degree or manner or cause, but of encroaching in any respect on its obligation, dispensing with any part of its force."

In Louisiana against New Orleans, 102 U. S., at page 206, it was said:

"The obligation of a contract, in the constitutional sense, is the means provided by law by which it can be enforced; by which the parties can be obliged to perform it. Whatever legislation lessens the efficacy of these means impairs the obligation."

III.

It results that the articles 315, 316, and 317, and especially 317, as sought to be enforced in this case, are unconstitutional for the reasons given in the intervention. The means provided to meet the contracts of the Drainage Commission consist of that permanent public improvement fund in a very large measure. There is no dispute as to the fact that every cent is required to carry out this most important work, and to fulfill the obligations of these contracts, which must be paid promptly or the whole plan will fall into a state of chaos. To enforce article 317, as proposed in this case by the relators, would not only impair obligations issued by the Board of Liquidation, whose rights will be defended by its counsel, but will impair the obligation of the contracts made by the Drainage Commission and the bonds issued by it. These contracts were made prior to the constitution of 1898 and with the distinct understanding that the bonds prepared and dated November 1, 1897, would be sold to meet them. The contracts were also made and the bonds sold to *bona fide* purchasers prior to the assumption by the city of relators' claim. That assumption was on July 26, 1898, and prior to that date *the city owed the relators nothing*. Under articles 315, 316, and 317 the relators' claims in this case, therefore, date only from July 26, 1898. Articles 315, 316, and 317 are, therefore, invalid:

(*a*.) Under the contract clause of the Constitution of the United States, article 1, section 10.

(*b*.) Under the fourteenth amendment of the United States Constitution, because they undertake, as shown in this case, to deprive a person of property without due process of law. The person to whom we refer is the Drainage Commission

of New Orleans, which is a juridical person, and included in the terms of the fourteenth amendment by repeated decisions, it having often been held that the fourteenth amendment protects legal persons as well as natural persons (Santa Clara Co. *vs.* So. Pac. R. R. Co., 118 U. S., 394).

The régime established by the articles 315, 316, and 317 seeks to break up and impair the whole plan of the act 110 of 1890 and the constitutional amendment of 1892, and it ought not to be enforced. The fact that this attempt is made under a State constitution makes no difference.

Cole *vs.* La Chambre, 31 La. Ann., at page 45.
White *vs.* Hart, 13 Wallace, 646

Our writ of error is therefore justified.

IV.

Great reliance has been placed by the relators upon language used in the case of The Board of Liquidation against McComb, 92 U. S., page 531; but, rightly considered, the decision in the case of McComb is very much in point in favor of the plaintiff in error is this case. McComb, a citizen of Delaware, filed his bill in the United States circuit court in New Orleans, as a holder of consolidated bonds under the act No. 3 of 1874, to enjoin the Board of Liquidation appointed under that act, which was about to violate its limitations. He obtained an injunction in the circuit court, and on appeal to the Supreme Court of the United States the decree was affirmed; thus declaring that even State officers composing a board of liquidation may be enjoined from violating the limitations of the funding act of 1874. Such a result seems to us to be in our favor in this controversy. The final result which we seek to obtain is tantamount to that which was attained by McComb.

The following differences may be noted between the two cases:

(*a.*) The Board of Liquidation in the case of McComb was willing to illegally fund the debt of the levee company.

(*b.*) The debt of the levee company was in existence prior to the funding act of 1874, whereas the city of New Orleans in the case at bar owed the relators nothing on the 12th of May, 1898, under articles 315, 316, and 317, when the constitution went in force.

(*c.*) There was no question in the McComb case of a *surplus* resulting from a special tax and dedicated to a public improvement fund, to be administered for purposes quite distinct from the issue of constitutional bonds and by agencies quite distinct. Under the funding act No. 3 of 1874 any surplus was used simply to pay the new bonds, and there was no question of the right of a permanent public improvement fund to a surplus which would be greater if the issue of bonds was confined to its legitimate purpose and which would be diminished if the issue of bonds should be unlawfully increased. This is a very important difference and does away with all effect of any expressions in the opinion of Mr. Justice BRADLEY which have been cited against us in this case. The right to such a surplus and to its preservation was not agitated in the case of McComb at all. If there had been such a surplus, coming to some third person, and devoted to some other object, by the funding act of 1874, it cannot be doubted that this court would have considered the impairment of that surplus as another reason for affirming the decree in favor of McComb.

(*d.*) But it may also be specially noted that while Mr. Justice BRADLEY discussed the question whether McComb could complain of an issue of bonds provided it did not

exceed the limit of $15,000,000, neither he nor the court reached any real decision of the question. What the learned judge said was, at page 539, that if this were all the case, the complainant would have "great difficulty" in maintaining his bill. This was not decision. It was not necessary to the disposition of the case, and no decision was really made in regard to it, because it was found that there was another point upon which the decree should be affirmed, and that was that the Board of Liquidation in that case was proceeding in a method not justified by the limitations of the funding act. This is distinctly in our favor.

We ask that the motion be denied.

Respectfully submitted.

WILLIAM WIRT HOWE,
For the Drainage Commission of New Orleans, Plaintiff in Error.

OCTOBER 30, 1899.

FILED
NOV 6 1899
JAMES H. McKENNEY,
Clerk

No. 377. (369.)

Reply Br. of Howe for P. C. (mo

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Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 377. (369.)

DRAINAGE COMMISSION OF NEW ORLEANS,
PLAINTIFF IN ERROR,

vs.

MISS LUCRETIA B. WILDER ET ALS., DEFENDANTS IN ERROR.

Brief of Plaintiff in Error, in Reply to Brief of Defendants in Error, on Motion to Dismiss or Affirm.

WILLIAM WIRT HOWE,
Of Counsel for Drainage Commission,
Plaintiff in Error.

NOVEMBER 4, 1899.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 11-4-'99

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 377. (369.)

DRAINAGE COMMISSION OF NEW ORLEANS,
PLAINTIFF IN ERROR,

vs.

MISS LUCRETIA B. WILDER ET ALS., DEFENDANTS IN ERROR.

Brief of Plaintiff in Error, in Reply to Brief of Defendants in Error, on Motion to Dismiss or Affirm.

The undersigned filed a brief on this motion October 30, 1899, which was prepared before the brief of movers was received. The brief of movers having been now received, and the court having given time to reply, the following considerations are submitted as supplemental to views already expressed:

I.

As already indicated, the elaborate discussion in the brief of the defendants in error concerning the status of the

Drainage Commission of New Orleans under the State constitution and State laws, and its right to receive, administer, and use the half of the surplus in question, can have no effect in support of the motion in this court to dismiss or affirm. It was purely a question of State law, and has been finally decided by the highest State court in favor of the Drainage Commission. The court of first instance held that the Drainage Commission had no interest, and dismissed its intervention. The supreme court of Louisiana on application for rehearing reversed this ruling and said:

"An examination of this cause on the application for rehearing has brought to our notice that in affirming the judgment of the district court we affirmed that portion of the same which dismissed the intervention of the Drainage Commission of New Orleans as being without any interest in the cause. * * *

"It is now ordered, adjudged and decreed that the judgment of the district court in so far as it dismisses the intervention of the Drainage Commission of New Orleans as having no interest in the cause * * * be annulled, avoided and reversed."

The validity of the drainage laws and the status of the commission are thus definitively settled by the highest State court under the constitution of the State, and this adjudication on a question of State law is everywhere binding.

Cornell *vs.* Fiske, 136 U. S., 152, 174.
In re Duncan, 139 U. S., 449.

Moreover, the defendants in error at the bar have taken no writ of error or appeal, and cannot disturb the conclusion of the State court on this or any other point.

We submit, then, that the defendants in error are mistaken when they assert, at page 31 of their brief, that the Drainage Commission has no standing to champion the rights of its bondholders or contractors. This question has been settled by the supreme court of Louisiana as a question of

State law, as we have pointed out, and its discussion can afford no support here to the motion to dismiss or affirm.

II.

We come now to something central and vital as concerns the motion. The defendants in error argue in many pages that this court may look into the opinions delivered by the supreme court of Louisiana in the instant case, and by some process of ratiocination build up a theory that the highest State court, while denying our rights as specially claimed under two clauses of the Constitution of the United States, has not in reality denied us any right. This, reduced to its lowest terms, seems to us the result of their argument.

Now, in intervening, we joined the Board of Liquidation in opposing the application for a mandamus, and we may refer to the able briefs filed by the counsel of that board in this court. We beg, however, to elaborate one point which seems to us decisive against the motion now under discussion.

On the application for a rehearing, after making the correction above quoted as to the Drainage Commission and another as to the question of interest on the amounts claimed by relators, the supreme court of Louisiana decreed as follows:

"It is further ordered, adjudged, and decreed that the judgment of *the district court*, except as herein altered and amended, be *affirmed*, and our own judgment, except in so far as herein altered and amended, remain *undisturbed*."

The judgment of the district court, as thus affirmed, directed the issue and sale of the bonds as demanded by the relators, defendants in error, without any reservation whatever. It flatly denied every claim in the cause, whether State or Federal, made by the Board of Liquidation and the Drainage Commission. It denied the rights they each

claimed under two clauses of the Constitution of the United States. It held the articles of the Louisiana constitution, 315, 316, and 317, to be valid, which we had asserted to be invalid and in conflict with the contract clause of the Constitution of the United States and the fourteenth amendment.

The first judgment of the supreme court of Louisiana thus left "undisturbed" and which so became final reads as follows:

"It is hereby ordered, adjudged and decreed that the judgment of the district court be and the same hereby is *affirmed*, except as to the interest allowed, which interest is hereby reduced from 5 to 4 per cent.; costs of appeal to be borne by appellee."

Leaving out, then, the corrections made as to the status of the Drainage Commission and the question of interest on relators' claims, the net result is the absolute affirmance of the judgment of the district court denying our Federal rights and directing an immediate and unqualified issue and sale of consolidated bonds, whose purchasers would at once invoke the rule of law to which we shall now refer. They would at once say:

"We have purchased these bonds under a decree of the supreme court of Louisiana, affirming a decree of the civil district court for the parish of Orleans, and neither decree contains any limitation of our rights or any subordination of our bonds. We invoke the well-settled rule of our law that the decree must govern."

What answer could be made to such a holder for value?

The primary fallacy involved in the argument of defendants in error is found in their ignoring this elementary difference between the decrees complained of and the expressions used in the opinion of the supreme court of Louisiana. The jurisprudence of Louisiana on the interpretation and effect of a decree or judgment is perfectly

settled. The opinion and reasons leading up to a decree are called motives (*motifs*), and the judgment or decree is characterized as dispositive (*dispositif*). In determining the meaning and effect of a decree or judgment, the dispositive portion controls. It is the thing adjudged, the *chose jugée*, the basis of *res adjudicata*. In Keane *vs.* Fisher, 10 La. Annual, 261, 262, the rule was applied in a case analogous in principle to that at the bar. The lower judge had predicated his judgment on some distinctions apparently made in a former *opinion* of the supreme court of Louisiana (9 Annual, p. 70). But the court in dealing with the surety in the 10 Annual, 262, pointed out that the reasons given in 9 Annual—the motives—formed no part of the judgment, *which made no change in the judgment of the lower court.* This judgment was affirmed and bound the surety in the case. And the court cited Marcadé, to whose views we shall hereafter refer.

See also Davis *vs.* Wilcoxen, 10 An'l, 640.

In Hill *vs.* Bowman, 14 Louisiana, 445, 446, the court said through Chief Judge MARTIN—

"The original judgment affirmed by us absolutely must have its effect independently of any expression used by this court in affirming it."

In Plicque *vs.* Perret, 19 Louisiana, 318, 324, the same rule was followed on a similar question, the court saying:

"The court (supreme court of Louisiana) proceeded to affirm the judgment of the district court in all its parts. * * * We are bound to consider the judgment of the district court, as forming that of this tribunal, just as much as if it had been copied into our formal decree affirming that of the court below."

In Slocomb *vs.* De Lizardi, 21 Louisiana Annual, 355, 358, where this question was argued by very distinguished

counsel, the same rule was followed and the citation from Marcadé adopted, which may be translated as follows:

"It is well understood that it is only in the dispositive portion of a judgment, and not in its motives, that the thing adjudged is found. * * * And more than this, the dispositive portion itself presents the thing adjudged only respecting those points actually decided, and not those merely enounced. It is by examining the questions on which the parties were in controversy, and which their contest presented—the *quid judicandum*—that we easily come to understand what has been adjudged—the *quid judicatum*."

Applying these elementary and indisputable rules, we fied the court of first instance denying absolutely the Federal rights of the plaintiffs in error, and this denial expressly affirmed.

The arguments, the hypotheses, the "enunciations," in the opinion of the supreme court of Louisiana cannot control the effect of what was thus finally decreed. If the court had ordered a new trial, to be had in conformity with its views as expressed in its *motifs*, the result might have been different. As to this we are not called on to express an opinion as counsel. The court did not order a new trial.

The result is that we have a decree of the district court affirmed against us, denying our Federal rights and asserting the validity of provisions we had claimed to be in conflict with the Federal Constitution. Neither the decree of the district court as affirmed nor the decrees affirming it contain any word recognizing our rights as specially claimed under the two clauses of the Constitution. The lower judge denied them. His judgment in this regard was affirmed by the supreme court of Louisiana. Our writ of error must stand. It presents two Federal rights specially claimed. We oppose the execution of the articles of the constitution of Louisiana on the ground that they were invalid, being in conflict with the Constitution of the United States as to the

contract clause and the fourteenth amendment. Those articles were held valid, and we had a right to our writ.

III.

The prophecies at pages 48–51 of the brief of defendants in error as to the future of the fund dedicated and consecrated to the work of the Drainage Commission will hardly be considered as relevant to the questions involved in the motion. They take a cheerful view of the future, but we cannot build drainage works on the faith of such predictions. We need every cent that belongs to our fund for an enterprise that concerns the health and comfort of the community.

We refer to the other briefs on file, and again ask that the motion be denied.

Respectfully submitted.

WILLIAM WIRT HOWE,
Of Counsel for Drainage Commission,
Plaintiff in Error.

NOVEMBER 4, 1899.

ADDENDUM.—The judgment of the lower judge, as affirmed by the highest court of Louisiana, and if the motion made here be granted, could be enforced by process of contempt and in other ways, according to its terms and without regard to the *motifs* in the opinion of Chief Justice Nicholls. The Board of Liquidation would be told (1) that the act of 1890 and the amendment of 1892 do not contemplate any issue of bonds inferior to others heretofore emitted; and (2) the judgment of the district court, being affirmed, is affirmed according to its terms, and is not to be modified or impaired by enunciations of the organ of the supreme court of Louisiana.

Office Supreme Court U. S.
FILED
NOV 26 1900
JAMES H. McKENNEY, Clerk.

No. 119.

Brf. of Howe & Spencer for Pl. in Err.

Filed Nov. 26, 1900.

IN THE

United States Supreme Court,

OCTOBER TERM, 1900.

No. 119 (114).

THE DRAINAGE COMMISSION OF NEW ORLEANS, - - Plaintiff in Error.

VERSUS

MISS LUCRETIA B. WILDER, et als., Defendants in Error.

Brief of Plaintiff in Error on the Merits.

WILLIAM WIRT HOWE,
WALKER B. SPENCER,
Of Counsel for Drainage Commission of New Orleans, one of the Plaintiffs in Error.

T. H. THOMASON, PRINT, 526 NATCHEZ STREET, N. O.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 119 (114).

THE DRAINAGE COMMISSION OF NEW ORLEANS,
PLAINTIFF IN ERROR,

versus

MISS LUCRETIA B. WILDER ET ALS.,
DEFENDANTS IN ERROR.

BRIEF OF PLAINTIFF IN ERROR ON THE MERITS.

The motion of the defendants in error to dismiss or affirm was submitted at the last term of this Court and referred to the merits.

The important points in the litigation, so far as Federal questions are involved, have been discussed in the brief submitted by the undersigned counsel for the Drainage Commission in October and November, 1899; and we may be permitted to also refer to the brief filed on that occasion by the counsel for the Board of Liquidation.

Briefly stated, the case in the Civil District Court for the Parish of Orleans, which was the court of first instance, was a proceeding of mandamus brought by the defendants in error, who were relators in the State Court, to compel the Board of Liquidation to sell a sufficient quantity of Consti-

tutional Bonds of the City of New Orleans, which had been made and executed under the provisions of Act 110 of 1890 and the Constitutional Amendment thereby proposed and adopted in 1892, to pay their school certificates, which were not assumed by the City of New Orleans and did not become debts of that City until July 26, 1898. Trans. pp. 1–19.

This claim of relators was made under the following articles of the Louisiana Constitution of 1898:

"ART. 315. The City of New Orleans is hereby authorized and required to examine into and assume payment of the obligations of the Board of Directors of the Public Schools of the Parish of Orleans for unpaid salaries of school teachers and portresses and of other legitimate claims against said School Board, for the years 1882, 1883, and 1884, and for unpaid salaries of school teachers and portresses for the years 1885, 1886 and 1887, now in the hands of the original owners, who have in nowise parted with their rights of ownership, or pledged the same, as may be found by said city to be equitably due by said Board. All claims to be examined into and assumed by the City of New Orleans under this article shall be presented to and filed with the City Council of said city within ninety days after the adoption of this Constitution, and not thereafter.

"ART. 316. The City Council shall issue certificates of indebtedness to the owners of said claims, when examined and found to be equitably due, and all such certificates shall be paid by the Board of Liquidation. If any of the claims aforesaid be rejected by the said City Council, the decision thereon may be reviewed by any court of competent jurisdiction, and the judgment of the court thereon shall, if in favor of the claimant, be likewise paid by the Board of Liquidation.

"ART. 317. The funds requisite to pay said claims shall be provided by said Board of Liquidation, by the sale of a sufficient number of the Constitutional bonds of the City of New Orleans of the issue provided for by Act No. 110 of the General Assembly for the year 1890, and by the amend-

ment to the Constitution of the State submitted to the people by said act and adopted at the general election in 1892."

The amount thus claimed by relators and which they desired to take from the fund was $115,558.33.

The defendant in the original proceeding for mandamus was the Board of Liquidation of the City Debt created by the Act of 1880, and the answer of that Board is found at pages 25 to 41 of the Transcript.

The Drainage Commission of New Orleans, a body politic created by the General Assembly of Louisiana by Act No. 114 of 1896, and which act was amended by the Statute No. 63 of 1898, deemed it its duty to intervene in the cause and to join in the defense. Its petition of intervention is found at pages 19 to 25 of the Transcript. There is practically no dispute as to the correctness of the facts set forth in this petition of intervention. It recites the preparation of a plan of surface drainage by the City of New Orleans and its adoption by the City in July, 1895, and a printed pamphlet containing the plan and maps is annexed to the petition, and brought up with the Transcript and filed in this Court, but has not been printed on account of the great expense which would be involved in engraving the numerous and elaborate maps. See stipulations printed at pages 192 and 193 of the Transcript. This plan was adopted by the General Assembly of Louisiana by Act No. 114 of 1896, referred to above, and was turned over by that statute to the Drainage Commission to be executed with such modifications as the circumstances might require. Intervenor further shows that by the legislation of 1896 and 1898, cited above, that portion of the funds in the hands of

the Board of Liquidation under the provisions of Act No. 110 of the General Assembly of Louisiana of 1890, accruing to public works, that is to say, to permanent public improvements in New Orleans, was, and is, dedicated and applied for the purpose of the drainage of the City of New Orleans, under the provisions and for the purposes of the Act of 1896, together with certain other funds; and that, in order to raise means for the purpose of doing this important work speedily and on an extensive scale, the Drainage Commission was endowed with power to issue and sell its negotiable bonds; and it was provided that all monies and funds dedicated and applied as aforesaid to the purposes of drainage were, and are, consecrated to the payment of the principal and interest of said bonds; and by Section 7 of the Act of 1896, it was further declared that all the provisions of said Act respecting the dedication and application of funds and money should constitute a contract with the holder or holders of bonds issued as aforesaid, the obligation of which contract should not be impaired and should be enforcible by any holder of said bonds by proceedings of mandamus and injunction or by other proper proceedings in court. The intervenor further sets forth the Amendatory Act No. 63 of 1898, limiting the issue of bonds to $1,500,000, and again declaring that all monies and funds so dedicated and applied to purposes of drainage were primarily consecrated to the payment of interest on said bonds and the redemption of the principal thereof, and that all of the provisions respecting the dedication and application of funds and monies should constitute a contract primarily with the holder or holders of the bonds and

also with each and every person or corporation that might have entered into contracts with the said Commission; and the obligation of said contract as to dedication and application of funds and money should not be impaired and might be enforced by any holder of said bonds or by any contract creditor of said Commission by proceedings of mandamus and injunction or by other proper proceedings in court.

The intervention further shows that in proceedings brought by the State of Louisiana against the persons composing the said Drainage Commission, and decided by the Supreme Court of Louisiana June 24, 1897, the Act of 1896 was declared to be a valid act of legislation, and the contracts set forth in the intervention were entered into in view of said decision.

The intervention further shows that existing contracts were made on the faith of the drainage legislation of 1896, and the dedication and consecration of funds thereby, with the National Contracting Co. August 9, 1897, for an amount of work estimated at $1,768,428; with E. A. Grasser, January 18, 1897, $46,170.70; Tulane University, December 7, 1897, $2500; F. B. Camors, April 22, 1898, $10,054.67; and J. J. Keegan, April 2, 1898, $7341.98, being a total of $1,834,-465.35. The amount outstanding and yet to be paid on said contracts at the time the Constitution of 1898 went into effect, namely, on the 12th day of May, 1898, was $1,516,913.30. At the time the intervention was filed, November 15, 1898, the amount thus outstanding had been reduced to $1,037,102.29, which the intervention declares cannot be met if the dedicated funds are reduced or impaired in anywise.

The intervenor further shows that when the said contracts were so made at the dates above mentioned, and especially when the very large one was made with the National Contracting Co., it was well understood that the funds so dedicated by the Drainage Act would not be sufficient to pay for the work done under these contracts as fast as the payments would fall due, but that bonds provided by the Sixth Section of the Act of 1896 would be issued and sold for the purpose; and that, accordingly, the intervenor had advertised and sold to the highest bidder, and for sums considerably above par, its negotiable bonds made in accordance with the Act of 1896 to the amount of $500,000, dated November 1, 1897, having forty years to run, and bearing interest at the rate of 5% per annum, payable semi-annually, and that said bonds were outstanding in the hands of *bona fide* purchasers, and that it would be necessary in like manner to sell the remaining one million dollars of bonds.

Intervenor averred that all of the funds dedicated and consecrated by this drainage legislation to the performance of the contracts made by the Commission and to the payment of the principal and interest of the bonds, were absolutely necessary and essential for said purposes, and that if any of the funds coming to intervenor under the Act of 1896 from the operations of the Act 110 of 1890 and from the portion thereby dedicated to permanent public improvements are diverted to any other purpose, such a diversion would be a violation of the provisions of the Act 110 of 1890 and of the Constitutional Amendment proposed thereby and adopted in 1892, and a violation of the Acts 114 of 1896 and 63 of 1898, and an impairment of the obligation

of the contracts made and established by the Act 110 of 1890 and by the Constitutional Amendments of 1892, and an impairment of the obligation of the contracts entered into by the intervenor with the said contractors, and especially with the National Contracting Company, and an impairment of the obligation of the contracts evidenced by the bonds issued and sold by intervenors for the purpose of carrying out the contracts above mentioned and to be issued and sold.

The intervenor further shows that its contracts, as above set forth, were made and entered into, and its bonds prepared and provided, before the adoption of the Constitution of 1898, to-wit., before May 12, 1898; that the alleged assumption by the City of New Orleans of the claims of relators was not made until on and after July 26, 1898, and long after the said contracts of the intervenor had been entered into, and after arrangements had been made for the issue of said bonds, and after $500,000 of the bonds had been advertised, sold and issued as aforesaid, as will appear by the ordinances referred to and relied upon by the relators. (See the Ordinance of Assumption, Trans. p. 59). The intervenor further alleges that the Articles 315, 316 and 317 of the Constitution of Louisiana of 1898 and any other provisions of said instrument upon the same subject matter, as sought to be applied by relators in this proceeding, and for the purpose of obtaining the relief claimed by them herein, are illegal, null, void and unconstitutional, because:

1. They violate the enabling Act No. 52 of 1896, approved July 7, 1896, of the Legislature of Louisiana, whereby the convention that framed the Constitution of 1898, which was to be adopted without submission to the people,

was strictly limited in its powers, and was prohibited from enacting or ordaining or framing any article or ordinance on the subjects so withheld from its competence, especially any article or ordinance whereby the bonded indebtedness of any parochial, municipal, levee, or other political corporation of the State of Louisiana should be affected, impaired or scaled, or the principal or interest thereof limited, reduced, suspended or abolished, without the consent of the holders of such bonds or security, which consent has never been given by any holder.

2. They violate Section 10 of Article 1 of the Constitution of the United States, whereby the State of Louisiana is forbidden to pass any law impairing obligations of contracts.

3. They violate the provisions of Article 14 of the amendments of the Constitution of the United States, which prohibit any State from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States, or depriving any person of property without due process of law.

4. They violate the provisions of and impair the obligations of the contracts established under the enactments of said Act No. 110 of 1890, and the constitutional amendment submitted thereby and adopted in 1892:

(*a*) By the issue and sale of bonds for purposes not provided, but inhibited, by said act and amendment.

(*b*) By impairing and infringing upon the surplus of proceeds from the tax so provided for permanent public improvement by said act and amendment, and so, as aforesaid, consecrated and dedicated to drainage by the said Act of 1896.

(*c*) By impairing the obligation of the contracts made

under said Act of 1890, and amendment of 1892, and especially provided for in Section 16 of said Act of 1890.

5. They impair the obligations of the contracts made, as aforesaid, by this intervenor and the contract obligations in favor of the holders of bonds issued and sold by intervenor under the said Drainage Act of 1896 and its amendments, as aforesaid, and bonds still to be issued, which depend for their fulfilment and solution upon said funds dedicated, as aforesaid, by the Act of 1896 and amendments, and cannot be met unless said funds remain unimpaired.

The intervenor further sets up its legal right and duty to come into the cause and to protect the funds, and the contracts made and bonds issued by it, and it specially claims the rights and immunities set up under the Constitution of the United States and prays that the demand of the relators might be rejected.

We may refer also to the answer of the Board of Liquidation and the exhibits found at pages 25 to 41.

The testimony in the cause is found at pages 42 to 87 of the transcript. It fully establishes the facts alleged in the intervention.

On December 16, 1898, the Judge of the court of first instance rendered a judgment in favor of the relators, granting their demand and dismissing the intervention of the Drainage Commission, upon the ground that it had no interest in the cause. Pages 88 and 89.

The Board of Liquidation and the Drainage Commission both appealed to the Supreme Court of Louisiana.

The Drainage Commission filed an Assignment of Errors in the Supreme Court of Louisiana under the permissive articles of our Code of Practice, in which the federal ques-

tions were again raised. (Pp. 93-94). On the first of May, 1899, the case having been argued, the Supreme Court of Louisiana rendered its opinion and judgment through its Chief Justice, affirming the judgment of the lower court *in toto*, except as to the question of the rate of interest. (Pp. 95-115).

The Board of Liquidation and the intervenor filed petitions for rehearing under the provisions of the Louisiana Code of Practice, and the Court made two corrections in its judgment which are found at page 124. It maintained the right of the Drainage Commission to intervene and, therefore, reversed the lower court on that point. It also rejected the claim of relators for interest; but in other respects it decided to let its judgment remain undisturbed, and so affirmed all other rulings below. See last judgment, page 125.

Thereupon, the Board of Liquidation and the intervenor each sued out its writ of error to remove the cause to this Court, and the intervenor filed the following assignment of errors (pp. 143-146):

ASSIGNMENT OF ERRORS.

The Drainage Commission of New Orleans, intervenor in this cause, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers are contained in the decision, judgment or decree of the Supreme Court of the State of Louisiana:

First. That by Section 1 of the amendment to the Constitution of the State of Louisiana, proposed by Act 110 of the General Assembly of said State, which proposal was approved July 8th, 1890, and which said amendment was adopted by a majority vote of the qualified electors of said

State at the general election thereon, held in April, 1892, it is provided that the 4 per cent. constitutional bonds of the City of New Orleans thereby authorized shall be for the purpose of retiring the then valid outstanding bonds of the City of New Orleans, and to retire judgments then or thereafter rendered against the said City on floating-debt claims prior to 1879, entitled to be funded under Act 67 of the General Assembly of the State of Louisiana of 1884; that by Section 3 of Act 36 of the General Assembly of 1890, otherwise known as Act 110 of that year, it was provided that all funds received by The Board of Liquidation of the City Debt, defendant herein, shall be deposited with the fiscal agent of the City of New Orleans, or, if the same be deemed not satisfactory by the said board, with a chartered depository selected by the same to the credit of a special fund called the "bond-sales" fund, which fund by said section, it is declared, shall be used solely and exclusively for the purpose of retiring by payment all of the then valid outstanding bonds of the City of New Orleans matured or subject to call, and the payment of judgments then or thereafter rendered on floating-debt claims prior to 1879 entitled to be funded under Act 67 of 1884.

That the purpose for which the said bonds were authorized by said amendment are exclusive of all others, and there is no authority in law for their issuance for any other purpose or purposes than those named in the said amendment; that by the terms of Section 3 of Act 36 (or 110) of 1890, the proceeds of the sale of any of said 4 per cent. constitutional bonds are set apart and dedicated solely and exclusively to the purposes therein named.

That Article 317 of the Constitution of the State of Lou-

isiana, adopted in 1898, which directs the Board of Liquidation to sell a sufficient number of said constitutional bonds to pay certain obligations of the board of school directors of the public schools for the Parish of Orleans for unpaid salaries of school teachers, portresses, and all other legitimate claims against said school board for the years 1882, 1883, 1884, 1885, 1886 and 1887, under the conditions named in Article 315 of the said Constitution of the State of Louisiana, so far as the same might be assumed by the City of New Orleans, after its examination of said claims, as directed by said article, directs the issuance and sale of said constitutional bonds for purposes not designated by said constitutional amendment and by said Act 36 (or 110) of 1890, by reason of which it is an impairment of the contracts and the rights therefrom arising by the said constitutional amendment and the said act.

That the contracts so violated are those in favor of the holders of all outstanding premium bonds issued by the City of New Orleans; all constitutional bonds issued or to be lawfully issued under the authority of said amendment and the said Act; those of all contractors who, up to the time the said Constitution of 1898 went into effect, to-wit., May 12, 1898, had constructed work of permanent public improvement, under contracts with the City of New Orleans, payable out of the surplus of the one per cent. tax authorized by the said amendment and the said Act, which said surplus was established and fully described in Sections 8 and 10 of said Act, and especially all contracts made by the Drainage Commission for drainage works, and all bonds issued by it under the Acts of the General Assembly of the State of Louisiana No. 114 of 1896 and No. 63 of 1898,

which by the last mentioned acts are payable out of the "permanent public improvement fund," composed of one-half of the said surplus of the said one per cent. tax established and described by Sections 8 and 10 of the said Act No. 36 (or 110) of 1890; which said fund, by said Acts No. 114 of 1896 and No. 63 of 1898, is especially set apart and dedicated for the payment and discharge of all said contracts made and of all said bonds issued by the said Drainage Commission.

That said acts further provide that all provisions respecting the dedication and application of funds or moneys shall constitute a contract with the holder or holders of said bonds and with each and every person or corporation which may have entered into contract with the said Drainage Commission, and expressly forbids any impairment of the same.

That the judgment or decree of the Supreme Court of the State of Louisiana which directs the execution of the board of liquidation of said Article 317 of the Constitution of the State of Louisiana of 1898, by the sale of a sufficient number of said four per cent. constitutional bonds to pay and retire the obligations of the board of school directors for the Parish of Orleans, which have been approved and assumed by the City of New Orleans under Article 315 of said Constitution, impairs the obligations of the contracts created by said Acts No. 36 (or 110) of 1890, No. 114 of 1896, and No. 63 of 1898, and that the said Article No. 317 of the said Constitution of itself, as well as interpreted by the Supreme Court of the State of Louisiana, and as the said Court, by its final judgment or decree herein, has directed its enforcement, and such enforcement is an impairment of the obligations of said contracts, and deprives all persons

holding rights under the same of their property without due process of law, all in violation of Section 10 of Article 1 and the Fourteenth Amendment of the Constitution of the United States.

Second. That all persons who made contracts with the Drainage Commission of New Orleans, and executed the same for the construction of works of permanent public improvement, the prices of which are payable out of the surplus of the one per cent. tax authorized by the said constitutional amendment, and levied by said Act No. 36 (or 110) of 1890, one-half of which surplus by Sections 8 and 10 of said act being specially dedicated to the payment and discharge of said contracts, are entitled to exclude from participation in any portion of said one per cent. tax any and all persons not entitled to participate therein by the said constitutional amendment and the said act, since any addition to the burden on said tax imposed by said amendment and said act, will correspondingly diminish the surplus remaining after payment of the annual charges fixed thereon by said amendment and the said act, and thus impair the obligations of the said contracts; that said Article 317 of the Constitution of the State of Louisiana of 1898, and the effect given to it by the final judgment or decree of the Supreme Court of the State of Louisiana in this case, is to impair the said contracts.

Third. That the obligations of all contracts made by the Drainage Commission, and all bonds issued by it and sold under the aforesaid Acts of 1896 and 1898, which are payable out of the permanent public improvement fund, composed of one-half of the surplus described in this assignment, are in like manner impaired by said Article 317 of

the State Constitution of 1898, and the effect given to it by the final judgment or decree in this case, the impairment of such obligations being the same in all particulars as that set up in this assignment, as concerns all contracts for permanent public improvements made with the City of New Orleans, and payable out of the surplus of the said one per cent. tax established and described in Sections 8 and 10 of said Act No. 36 (or 110) of 1890, the addition of the charge for principal and interest on the constitutional bonds, which are directed to be sold by said Article 317 of the Constitution of the State of Louisiana of 1898, affecting a diminution of the said surplus out of which it is the sole and exclusive right of contractors, with the said Drainage Commission and the holders of its bonds, to be paid.

That said Article 317 of said Constitution and the effect given to it by the final judgment or decree of the Supreme Court of the State of Louisiana in this case is an impairment of the obligations of the contracts of said contractors and the holders of said bonds of the said Drainage Commission.

That said Article 317 of the Constitution of the State of Louisiana of 1898, and the effect given to it by the final judgment or decree of the Supreme Court of the State of Louisiana in this case is to impair the contracts in favor of all holders of said constitutional bonds created and evidenced by the said constitutional amendment and the said acts.

Fourth. That said Article 317 of the Constitution of the State of Louisiana of 1898 and the effect given to it by the final judgment or decree of the Supreme Court of the State of Louisiana in this cause impairs the obligation of

all the contracts and bonds heretofore set out, mentioned and described, and deprives the holders and owners thereof of their property without due process of law; in violation of Section 10, Article 1, and the Fourteenth Amendment of the Constitution of the United States.

Fifth. The Supreme Court of the State of Louisiana erred in giving such effect or any effect at all to said Article 317; and it further erred in not rejecting the demand of the relators and dismissing their suit on these grounds; that the errors in the said final judgment and decree and the proceedings anterior thereto are those specially set out and enumerated above, and they entitled defendant to a reversal of said final judgment or decree of the Supreme Court of the State of Louisiana, and the rejection by this Court of the relators' demand.

Wherefore, for these and other errors apparent on the face of the record, this intervenor and plaintiff in error prays that the judgment of the said Supreme Court of the State of Louisiana be reversed, and such directions be given that full force and efficacy may inure to intervenor by reason of the premises set up in its intervention filed in the said cause.

ARGUMENT.

Under the constitutional amendment proposed in Louisiana by the Act 110 of 1890, and adopted in 1892, an issue of constitutional bonds of the City of New Orleans, not exceeding $10,000,000, was authorized for certain specific purposes and for no other. These purposes are specified in Section 1 of the Act. They are:

"For the purpose of retiring the *now existing* valid outstanding bonds of the City of New Orleans, including the bond certificates or bonds issued under the Act of the Legislature, No. 58 of 1882, and to retire judgments hereafter rendered against the city on floating debts *prior to 1879*, entitled to be funded under Act 67 of 1884."

The application of these bonds is described as follows:

"The said bonds shall be applied by the said Board to the retirement of the said outstanding bonds and judgments by the sale of said constitutional bonds and application of the proceeds of sale by the Board of Liquidation to pay or purchase said outstanding bonds and judgments, or by exchanging the said constitutional bonds, for bonds, on the terms and in the mode prescribed by the Legislature."

To provide for the carrying out of this plan, it is further declared that:

"For the payment of the interest and principal at maturity of said constitutional bonds and other outstanding bonds not retired under this amendment, and for the payment of the annual allotments and premiums of the premium bonds of said City, the said City is hereby authorized and directed to levy annually, and until the full payment of said bonds, a special tax of 1 per cent. on all the real and personal property of the City."

The proceeds of said tax to be applied by the Board of Liquidation:

"To the payment of the interest and principal at maturity of said constitutional bonds and outstanding bonds not retired, and to the payment of the allotments of premium bonds and premiums extant in the hands of holders."

It is further provided as follows:

"Said tax is hereby declared to be the contract right of the holder of all of said bonds, and the exemption of said constitutional bonds from all taxation by the City of New Orleans and State of Louisiana is hereby recognized and declared; and after the payment of all the annual interest

on said constitutional bonds and bonds not retired and the payment of the said annual allotments of premium bonds and premiums extant in the hand of holders, and after making provisions for a sinking fund, at such time and of such an amount as the Legislature prescribes, the surplus of said one per cent. shall be disposed of as prescribed by the Legislature."

It is further declared that:

"The Act passed at the present session, No. 36, entitled, An Act to carry into effect the Constitutional Amendment passed at the present session relative to the bond debt of the City of New Orleans, etc., be, and is hereby, approved and confirmed in all its parts as a contract between the City of New Orleans and the holders of the aforesaid constitutional bonds, premium bonds, and of the bonds outstanding not retired, as aforesaid."

This Act called "No. 36," which was probably its journal number, is appended to the constitutional amendment at the foot of page 145 of the Acts of 1890.

Section 2 of the constitutional amendment thus proposed and afterwards adopted, authorizes and empowers the City of New Orleans to examine into and assume the payment of the claims or obligations of the Board of School Directors for the City and Parish of New Orleans due for the years 1880, 1881, 1882, 1883 and 1884. This provision emphasizes the plain distinction between an obligation of the Board of School Directors and an obligation or debt of the City of New Orleans, a distinction which also has been recognized by the Supreme Court of Louisiana; and this Section 2 does not at all authorize the use of the constitutional bonds to pay any obligation of the Board of School Directors, whether assumed by the City or not. On the contrary, the affirmations of this section are pregnant with

a denial of the rights to use the bonds in such a way, it being manifest that claims or obligations of the Board of School Directors are to be assumed and paid in some other way, and as a matter of fact this has been done, as shown in this record. See admissions of counsel, p. 82.

Proceeding now to the act appended to the constitutional amendment, we find in Section 1, page 146, another and equivalent statement and limitation of the use to be made of the constitutional bonds as follows:

"That in order to provide for the retirement of the outstanding bond indebtedness of the City of New Orleans and such other indebtedness as, under *existing* laws, is, or becomes entitled, to be funded into any series of bonds, always saving and excepting, however, the bonds known as premium bonds, the City of New Orleans is authorized, empowered, and directed to issue bonds to the amount of $10,000,000; 9000 of which bonds shall be for $1000, and 2000 of which shall be for $500 each, to be known as the constitutional bonds of the City of New Orleans, dated July 1, 1892, payable fifty years after date, with the right to call by lot," etc.

It is manifest from this provision that it does not enlarge the limitations of Section 1 of the constitutional amendment itself as to the objects to which the bonds were to be solely devoted. On the contrary, the issue is to be confined to the retirement of outstanding bond indebtedness and other indebtedness fundable in bonds under existing laws; that is to say, the bonds outstanding or indebtedness entitled to be funded in bonds prior to July, 1890. Passing on, we find Sections 8, 10 and 16 of the appended act, called 36, to be as follows:

"SECTION 8. Be it further enacted, etc., That out of the proceeds of said one per cent. per annum tax, beginning in the year 1892, the said Board of Liquidation shall annually

provide for the carrying of the premium bond plan, the payment of the interest on the bonds herein authorized to be issued, and of the interest upon all other outstanding interest-bearing bonds of the City of New Orleans, and after the year 1925, for the annual sinking fund necessary to call and retire the number of bonds provided for in Section 9 of this act. After making, in each year, the provisions above required, and after deducting the expenses incurred by said board, and after paying any deficiency in the interest fund of any previous years, one-half of the surplus of said tax shall be passed to the credit of a special fund, to be known as the 'permanent public improvement fund,' to be disposed of as hereinafter provided; the other half of said surplus shall be paid over to the School Board of the City of New Orleans, in addition to any fund appropriated by said city out of other funds, to be used in the maintenance and support of the public schools in said city."

"SECTION 10. That the permanent public improvement fund, above provided for, shall be used exclusively for the construction of permanent public improvements in the City of New Orleans, such as levees, canals, drainage stations, pavements, public buildings, public parks and bridges, and all ordinances passed by the City Council to be paid out of this fund, shall first be approved by the said Board of Liquidation, who shall not draw any check on said fund unless they are convinced, upon proper inquiry, that said ordinance covers the construction of a permanent public improvement, within the purview of this act. The true intent and meaning of this clause is not to give said Board any authority to say to what permanent public improvement any fund shall be applied, but only to see that said funds shall be applied exclusively to the construction of improvements that are permanent."

"SECTION 16. That all of the substantial provisions of this act are hereby declared to be a contract between the State of Louisiana, the City of New Orleans, the taxpayers of said City, and each and every holder of said constitutional bonds."

By the concluding portion of Article 254 of the Consti-

tution of 1898, it is provided that one-half of this surplus which goes to the public schools shall not be disturbed, but that the schools shall still continue to receive the same. If, therefore, the relators succeed in carrying out their plans in this case, the disturbance of the surplus will fall entirely upon the one-half which has been consecrated as a permanent public improvement fund, and which will thus be reduced to a double degree.

We now come to the relation of the DRAINAGE COMMISSION OF NEW ORLEANS to this cause. Referring again to Act 114 of 1896, we find that by the 3d Section of that law, the portion of the funds in the hands of the Board of Liquidation under the provisions of Sections 8 and 10 of the Act No. 110 of 1890, devoted to permanent public improvements, accruing to such works from and after Jan. 1, 1898, is dedicated and applied to the purpose of drainage of the City of New Orleans, being one of the principal purposes catalogued in Section 10 of the Act of 1890, as quoted above.

By Section 4 the Commission is endowed with full power to control and execute the drainage of the City of New Orleans, and to carry out substantially the plan for such drainage which had been adopted by the Council of said City July 10, 1895.

By the 6th Section, in order to do the work of drainage speedily and on an extensive scale, so as to benefit all parts of the city as soon as possible, the Commission is authorized to issue bonds to an amount not exceeding $5,000,000, and all moneys and funds dedicated and applied by the act to the purpose thereof are consecrated to the payment of the principal and interest on said bonds.

By Section 7 all the provisions of the act respecting the dedication and application of the funds and moneys are constituted a contract with the holder or holders of the bonds.

On June 21, 1897, in the case of the State vs. Flower, 49th Annual, 1199, the Supreme Court of Louisiana decided that the Drainage Commission was a lawful body, which the Legislature had the power to create as an instrumentality for the drainage of the city, and on the faith of this decision contracts were made and bonds issued, as hereinafter set forth. P. 82.

After this decision had been rendered and from about August, 1897, down to a time just prior to the adoption of the Constitution of 1898—that is to say, May 12, 1898—on the faith of the Act 114 of 1896 and the above decision of this Court, the Drainage Commission entered into contracts to the amount of nearly $2,000,000, which are all set forth in the testimony and concerning which there is no dispute, and of the work so contracted for a very large amount remained still to be done and paid for, which, as the testimony shows, must be paid for in cash from time to time as the instalments are completed. The testimony also shows that no proceeds had as yet been received by the Drainage Commission from the permanent public improvement fund under Act 110 of 1890, but a certain amount was expected to be received during the year 1899. In order to speed the construction of the work, bonds were prepared and provided under Act 114 of 1896, bearing date November 1, 1897, and of these $500,000 were sold at a premium to *bona fide* purchasers in June, 1898. By Act No. 63, approved July 9, 1898, the issue of bonds was limited to $1,500,000,

and it was declared that all moneys and funds dedicated and applied for the purposes of drainage by the Act 114 of 1896, as amended by Act 63, were primarily consecrated to the payment of the interest on said bonds and the redemption of the principal, and that all of the provisions respecting the dedication and application of funds and moneys should constitute a contract, primarily, with the holder or holders of said bonds, and also with each and every person or corporation that might have entered into contracts with the said Commission, and the obligation of said contract should not be impaired.

It appears without dispute that in 1897, when the bulk of the contracts were made, it was understood that drainage bonds would be thus issued and sold to meet the contracts. (See testimony of Walmsley, p. 47; Mullan, p. 73, and Freret, p. 73).

We call especial attention to the foregoing dates, from which it will be seen that the contracts made by the Commission antedate the adoption of the Constitution of 1898; that when they were made it was understood that drainage bonds would be issued and sold to pay for the work; that the bonds were prepared and dated November 1, 1897, and that the assumption by the City of New Orleans of the obligations of the School Board, upon which this suit is instituted, did not take place until July 26, 1898; that is to say, long after our contracts were made and bonds issued and sold, and after the amending Act of July 9, 1898, had been adopted by the Legislature. Prior to July 26, 1898, the City of New Orleans owed relators nothing. Labatt vs. City, 38 La. An. 283. Trans. p. 106.

It cannot be disputed, as a matter of fact, that all the

funds consecrated by the Drainage Act, 114 of 1896, are absolutely necessary to meet the contracts made, as above stated, and the principal and interest of bonds already issued. The testimony of Mr. Walmsley on this point is clear and uncontradicted, pp. 48-50. It further appears, as a matter of fact, that if the demands of the relators are allowed, $115,000 of bonds will be issued under Act 110 of 1890, on which the annual interest charge will be $4,600. The surplus coming, therefore, to the permanent public improvement fund and dedicated to drainage purposes would be reduced by at least the sum of $2,300 a year for not less than forty years. But inasmuch as under the operations of Article 254 of the Constitution of 1898, quoted above, the half of the surplus going to schools is specially protected, the whole of this impairment of $4,600 a year will fall upon the half of the surplus coming to the Drainage Commission. It will be seen at once, as a matter of mathematics, that this impairment might amount to $170,000 or more, and this in addition to the claims of a sinking fund.

I.

As appears from the foregoing statements founded upon the record, the Supreme Court of Louisiana, reversing the court of first instance, in this respect, has finally decided that the Drainage Commission had the right to intervene for protection of the fund committed to it and of the various contracts which it had made. The legal status of the Drainage Commission and its right so to intervene are questions arising under the Constitution and laws of Louisiana, and the decision of the Supreme Court of Louisiana upon such local questions is final. And as to the general

right to intervene, we may refer to State vs. Pilsbury, 31 La. An. 1, 8.

The surplus coming to the Drainage Commission from the operation of the Act No. 110 of 1890 belongs to it; and it has the same right to protect the fund that a private person similarly situated might have to protect a fund from illegal seizure or conversion.

The fund is specially dedicated to an important purpose, and large contracts have been made and bonds issued upon the faith of this fund, and it is the duty of the Drainage Commission, in its fiduciary capacity and on plain general principles, to protect this fund from impairment, whether such impairment be great or small. In the case of Florida against Georgia, 17 Howard, 478, Mr. Caleb Cushing gave an excellent definition of intervention, which he saw was derived from the Civil Law, as follows:

"Intervention is the generic designation in the Civil Law of the various technical processes by which, when a suit is pending between two parties, a third party is allowed to interpose for the assertion of some collateral, implicit or ulterior right, adverse to that of either or both of the others, or to defend a responsibility involved in the issue of the controversy."

It was claimed in argument below that the Drainage Act of 1896 is unconstitutional, as a matter of State law, so far as it undertakes to place the permanent public improvement fund under the administration of the Drainage Commission.

But the Supreme Court of Louisiana in this cause held the Drainage Commission entitled to intervene and protect this fund, and manifestly considered the drainage laws constitutional, p. 124. We may refer, also, to State vs.

Flower, 49 Louisiana Annual, 1199. But this being a State question, we need not trouble this Court by discussing it. Cornell vs. Fiske, 136 U. S. 152, 174; In Re Duncan, 139 U. S. 449.

II.

It appears by the testimony and as a matter of calculation that by the execution of Articles 315, 316 and 317 of the Constitution of 1898, as proposed by the relators and by the judgment of the State Court, the surplus coming to the permanent public improvement fund will be impaired by at least $170,000—say, $4,600 a year for some forty years. This impairment is a very serious one, especially as the testimony shows that every cent of the permanent public improvement fund is needed to carry out the contracts made by the Drainage Commission prior to May 12, 1898, and to pay the drainage bonds which were issued and sold before the City assumed the claims of the relators. We repeat that the Drainage Commission had made contracts amounting to nearly $2,000,000; and had issued and sold bonds to pay such contracts to the amount of $500,000 before the City became indebted to relators.

It may be added also that the amount of impairment is not essential. The Constitution of the United States does not declare that a State "shall not pass any law impairing the obligation of contracts to a very great extent." The prohibition is against the impairing of such obligations at all. In Planters' Bank against Sharp, 6th How., page 327, the Court said:

"One of the tests that a contract has been impaired is that its value has by legislation been diminished. It is not, by the Constitution, to be impaired at all. This is not

a question of degree or manner or cause, but of encroaching in any respect on its obligation, dispensing with any part of its force."

In Louisiana against New Orleans, 102 U. S., at page 206, it was said:

"The obligation of a contract, in the constitutional sense, is the means provided by law by which it can be enforced; by which the parties can be obliged to perform it. Whatever legislation lessens the efficacy of these means impairs the obligation."

III.

It results that the Articles 315, 316 and 317, and especially 317, as sought to be enforced in this case, are unconstitutional for the reasons given in the intervention. The means provided to meet the contracts of the Drainage Commission consist of that permanent public improvement fund in a very large measure. There is no dispute as to the fact that every cent is required to carry out this most important work, and to fulfil the obligations of these contracts, which must be paid promptly or the whole plan will fall into a state of chaos. To enforce Article 317, as proposed in this case by the relators, would not only impair obligations issued by the Board of Liquidation, whose rights will be defended by its counsel, but will impair the obligation of the contracts made by the Drainage Commission and the bonds issued by it. These contracts were made prior to the Constitution of 1898, and with the distinct understanding that the bonds prepared and dated November 1, 1897, would be sold to meet them. The contracts were also made and the bonds sold to *bona fide* purchasers prior to the assumption by the City of relators' claim. That assumption was on July 26, 1898, and prior to that

date the City owed the relators nothing. Under Articles 315, 316 and 317 the relators' claims in this case, therefore, date only from July 26, 1898. Articles 315, 316 and 317 are, therefore, invalid:

(*a*) Under the contract clause of the Constitution of the United States, Article 1, Section 10.

(*b*) Under the fourteenth amendment of the United States Constitution, because they undertake, as shown in this case, to deprive a person of property without due process of law. The person to whom we refer is the Drainage Commission of New Orleans, which is a juridical person, and included in the terms of the fourteenth amendment by repeated decisions; it having been held that the fourteenth amendment protects legal persons as well as natural persons. (Santa Clara Co. vs. So. Pac. R. R. Co., 118 U. S. 394).

The regime established by the Articles 315, 316 and 317 seeks to break up and impair the whole plan of the Act 110 of 1890 and the constitutional amendment of 1892, and it ought not to be enforced. The fact that this attempt is made under a State Constitution makes no difference.

Cole vs. La Chambre, 31 La. An. at page 45.

White vs. Hart, 13 Wallace, 646.

IV.

Great reliance has been placed by the relators upon language used in the case of the Board of Liquidation against McComb, 92 U. S., page 531; but rightly considered, the decision in the case of McComb is very much in point in favor of the plaintiff in error in this case. McComb, a citizen of Delaware, filed his bill in the United

States Circuit Court in New Orleans, as a holder of consolidated bonds under the Act No. 3 of 1874, to enjoin the Board of Liquidation appointed under that act, which was about to violate its limitations by issuing bonds for an object beyond its scope. He obtained an injunction in the Circuit Court, and on appeal to the Supreme Court of the United States, the decree was affirmed; thus declaring that even State officers composing a board of liquidation may be enjoined from violating the limitations of the Funding Act of 1874. Such a result seems to us to be in our favor in this controversy. The final result which we seek to obtain is tantamount to that which was attained by McComb.

The following differences may be noted between the two cases:

(*a*) The Board of Liquidation in the case of McComb was willing to illegally fund the debt of the Levee Company.

(*b*) The debt of the Levee Company was in existence prior to the Funding Act of 1874, whereas the City of New Orleans in the case at bar owed the relators nothing on the 12th of May, 1898, under Articles 315, 316 and 317, when the Constitution went in force.

(*c*) There was no question in the McComb case of a surplus resulting from a special tax and dedicated to a public improvement fund, to be administered for purposes quite distinct from the issue of constitutional bonds and by agencies quite distinct. Under the Funding Act No. 3 of 1874, any surplus was used simply to pay the new bonds, and there was no question of the right of a permanent public improvement fund to a surplus which would be greater if the issue of honds was confined to its legitimate

purpose and which would be diminished if the issue of bonds should be unlawfully extended. This is a very important difference and does away with all effect of any expressions in the opinion of Mr. Justice Bradley which have been cited against us in this case. The right to such a surplus and to its preservation was not agitated in the case of McComb at all. If there had been such a surplus, coming to some third person, and devoted to some other object, by the Funding Act of 1874, it cannot be doubted that this Court would have considered the impairment of that surplus as another reason for affirming the decree in favor of McComb.

(*d*) But it may also be specially noted that while Mr. Justice Bradley discussed the question whether McComb could complain of an issue of bonds, provided it did not exceed the limit of $15,000,000, neither he nor the Court reached any real decision of the question. What the learned Judge said was, at page 539, that if this were all the case, the complainant would have "great difficulty" in maintaining his bill. This was not decision. It was not necessary to the disposition of the case, and no decision was really made in regard to it, because it was found that there was another point upon which the decree should be affirmed, and that was that the Board of Liquidation in that case was proceeding in a method not justified by the limitations of the Funding Act of 1874. This is distinctly in our favor.

V.

We come now to a very curious point in the case. In former briefs filed by our opponents, it seems to be intimated that the State Court has done us no harm, because

the Chief Justice of Louisiana, as the organ of the Supreme Court of our State, has, in his reasons, stated a number of propositions in our favor, and seemingly supported our main contentions. It is quite true that the learned Chief Justice, in what the civilians call the "*motifs*" of the opinion delivered by him, and especially in the portions found at pages 110 to 114 of the Transcript, concedes and states that the Drainage Commission has been duly organized, and, at the time of the adoption of the Constitution of 1898, had created obligations to a large amount payable out of the surplus which is here in question. He further states that the relators do not claim a right to have their claims paid under the Act of 1890, and declares that their pretensions rest exclusively upon the effective force of Articles 315, 316 and 317 of the Constitution of 1898, which effective force the defendants question. Page 110. At page 111, while suggesting that the Constitutional Convention might possess the power to stop the work of drainage, he yet declares that the rights of contract creditors as they should have existed at the date of such action by the convention could not have been impaired by such action; in other words, that the Constitutional Convention could have no right to do anything that should impair the obligation of our existing contracts.

He then discusses, pages 111, 112, the question whether the constitutional bonds which the relators demand to have sold in order that the proceeds may be applied to their claims would prime the holders of the bonds issued by the Drainage Commission, or stand on a footing of equality with the other consolidated bonds issued under the Act

110 of 1890, and arrives at the following conclusions, stated in our own language:

1. If, for any cause, the amount of the 1% tax imposed and collected under the Act 110 of 1890 should be insufficient to provide for prior obligations, the holders of the bonds to be issued under this mandamus could not force the former to prorate with them the amount in hand.

2. This condition of things does not yet exist and may never arise, but should it arise, the Board of Liquidation would, doubtless, have taken steps to distinguish bonds issued under Article 317 from those which had been otherwise issued.

3. It sometimes happens from special circumstances that the holders of one or more of the same series of notes may hold rights subordinate to those of the holders of others, and if there should be in the future any actual conflict of interests, the Board of Liquidation and the parties interested will doubtless have taken steps to be able to protect themselves.

4. As to the surplus, the learned organ of the court denies the theories of the relators and adopts the theory of the defendant and intervenor, and then says, p. 113:

"We think the Board of Liquidation, the Drainage Commissioners, and those with whom they contracted, were justified in placing that interpretation upon the legislation, and that contract rights based upon the same should be protected from impairment. The Convention, while ordering the payment of the certificates held by the relators through sales of consolidated bonds, could not confer upon the holders of such bonds rights which in any way would come in competition with the contract rights of creditors existing against the tax at the time of the adoption of the Constitution. Though there was no mention

in the Constitution as to the rank of the bonds which would be issued to take up relators' certificates, that rank resulted from legally existing conditions which could not be constitutionally interfered with. There is no constitutional objection to the convention ordering the Board of Liquidation to sell bonds to take up the relators' certificates, *but there would be constitutional objections to be urged if the effect of the issuing of such bonds would be to place the holders thereof on an equality with the holders of bonds issued to take up the bonds and claims provided for as to their funding and payment by Act No. 110 of 1890, Act No. 114 of 1896 (the drainage act)*, and the Constitutional Amendment of 1892. Duperier vs. Police Jury, 31 An. 710; Shields vs. Pipes, 31 An. 765.

"The consolidated bonds which relators seek to have issued upon their prayer will really be drawn against, when issued, any surplus that will remain of the 1% tax after the payment of all the bonds issued and to be issued by the Board of Liquidation under Act No. 110 of 1890 and the Constitutional Amendment of 1892, in order to fund and retire and pay the bonds and debts therein specially enumerated, *and also the bonds issued and to be issued by the Drainage Commission under the provisions and authority of Act No. 114 of 1896*, to pay the contracts existing at the date of the adoption of the Constitution, which were entered into upon the faith of the surplus directed to be set aside to the credit of the permanent improvement fund by the Act No. 110 of 1890, *Act No. 114 of 1896*, and the Constitutional Amendment of 1892."

These expressions by the learned organ of the Court are certainly greatly in our favor, and if they had been carried into effect by the judgment of the Supreme Court of Louisiana, would have resulted in a very different judgment. It is quite possible that with such an outcome, the Supreme Court of the United States would not have been troubled in the matter. The learned Chief Justice of Louisiana seems to have felt the force of our contentions, and up to the close of his opinion it seemed that the judgment of his

Court would be in our favor, sustaining our federal rights, to at least a considerable extent. But when we come to what the civilians call the "*dispositif*" portion of the opinion, we find a sudden and disastrous change, and the judgment as rendered is as follows (p. 114):

"For the reason assigned, it is hereby ordered, adjudged and decreed that *the judgment of the District Court* be, and the same is hereby, *affirmed*, except as to the interest allowed, which interest is hereby reduced from 5% to 4%, the costs of appeal to be borne by appellees."

The defendant and the intervenor each made an application for a rehearing, which resulted in the following modification of the opinion and of the judgment of the Supreme Court of Louisiana (page 124):

"An examination of this cause on the application for a rehearing has brought to our notice that in affirming the judgment of the District Court we affirmed that portion of the same which dismissed the intervention of the Drainage Commission of New Orleans as being without any interest in the cause.

"A re-examination of the cause has brought us to the conviction that our judgment is erroneous, in so far as it accorded interest to the relators upon their certificates.

"For the reasons assigned, it is ordered, adjudged and decreed that our former judgment be amended by setting aside that portion of the same by which interest at four per cent. is accorded to the relators, and by which the judgment of the District Court is affirmed in dismissing the intervention of the Drainage Commission.

"It is now ordered, adjudged and decreed that the judgment of the District Court, in so far as it dismisses the intervention of the Drainage Commission of New Orleans as having no interest in the cause, and in so far as it recognizes the right of the relators to interest upon their certificates, be annulled, avoided, and reversed, and it is now ordered, adjudged and decreed that, recognizing the right of the

said Drainage Commission to intervene herein, its intervention be, and it is hereby reinstated; and it is further ordered and decreed that that portion of relators' present demand by which they pray that they be recognized as entitled and accorded interest upon their certificates be. and the same is hereby rejected.

"It is further ordered, adjudged and decreed, that the judgment of the District Court, except as herein altered and amended, be affirmed, and our own judgment, except in so far as herein altered and amended, remain undisturbed."

The judgment of the District Court, as thus finally affirmed (pages 88, 89), directs the issue and sale of bonds as demanded by the relators, defendants in error here, without any reservations whatever. It flatly denies every claim in the cause, whether State or Federal, made by the Board of Liquidation and the Drainage Commission. It denies the rights they each claim under two clauses of the Constitution of the United States. It holds the Articles of the Louisiana Constitution of 1898, 315, 316 and 317, to be valid, which we had asserted to be invalid, and in conflict with the contract clause of the Constitution of the United States and the fourteenth amendment.

Leaving aside, then, the corrections made by the final judgment of the Supreme Court of Louisiana as to the status of the Drainage Commission and the question of interest on relators' claims, the net result is the absolute affirmance of the judgment of the District Court denying our Federal rights, and directing an immediate and unqualified issue and sale of consolidated bonds, whose purchasers would at once claim rights equal to those of the holders of any other bonds issued under the same law, and

would at once invoke the well established doctrine to which we shall now refer.

They would at once say: "We have purchased these bonds under a decree of the Civil District Court for the Parish of Orleans, which has been affirmed by a decree of the Supreme Court of Louisiana, and neither decree contains any limitation of our rights or any subordination of our bonds. We invoke the well settled rule of law that the decree must govern."

What answer could be made to such a holder for value? None at all. The jurisprudence of Louisiana on the interpretation and effect of a decree or judgment is perfectly settled. The opinion and reasons leading up to a decree are called motives (*motifs*), and the judgment or decree is characterized as dispositive (*dispositif*). In determining the meaning and effect of a decree or judgment, the dispositive portion controls.

It is the thing adjudged, the "*chose jugée*," the basis of *res adjudicata*. In Keane vs. Fisher, 10 La. Annual, 261, 262, the rule was applied in a case analogous in principle to that at the bar. The lower Judge had predicated his judgment on some distinctions apparently made in a former opinion of the Supreme Court of Louisiana (9 Annual, p. 70). But the Court, in dealing with the surety in the 10 Annual, 262, pointed out that the reasons given in the 9 Annual, the motives, formed no part of the judgment, *which made no change in the judgment of the lower court.* This judgment was affirmed and bound the surety in the case. And the Court cited Marcadé, to whose views we shall hereafter refer.

See, also, Davis vs. Wilcoxen, 10 An. 640.

In Hill vs. Bowman, 14 Louisiana, 445, 446, the Court said, through Chief Judge Martin:

"The original judgment affirmed by us absolutely must have its effect independently of any expression used by this Court in affirming it."

In Plicque vs. Perret, 19 Louisiana, 318, 324, the same rule was followed on a similar question, the Court saying:

"The Court (Supreme Court of Louisiana) proceeded to affirm the judgment of the District Court in all its parts. * * * We are bound to consider the judgment of the District Court as forming that of this tribunal, just as much as if it had been copied into our formal decree affirming that of the court below."

In Slocomb vs. De Lizardi, 21 La. An. 355, 358, where this question was argued by very distinguished counsel, the same rule was followed and the citation from Marcadé adopted, which may be translated as follows:

"It is well understood that it is only in the dispositive portion of a judgment, and not in its motives, that the thing adjudged is found. * * * And more than this, the dispositive portion itself presents the thing adjudged only respecting those points actually decided, and not those merely enounced. It is by examining the questions on which the parties were in controversy, and which their contest presented—*quid judicandum*—that we easily come to understand what has been adjudged—the *quid judicatum*."

Applying these elementary and indisputable rules, we find the court of first instance denying absolutely the federal rights of the plaintiffs in error, and this denial expressly affirmed.

The arguments, the hypotheses, the "enunciations," in the opinion of the Supreme Court of Louisiana, cannot control the effect of what was thus finally decreed. If the

court had ordered a new trial, to be had in conformity with its views as expressed in its *motifs*, the result might have been different. As to this we are not called on to express an opinion as counsel. The court did not order a new trial.

The result is that we have a decree of the District Court affirmed against us, denying our federal rights and asserting the validity of provisions we had claimed to be in conflict with the Federal Constitution. Neither the decree of the District Court as affirmed, nor the decrees affirming it, contain any word recognizing our rights as specially claimed under the two clauses of the Constitution. The lower Judge denied them. His judgment in this regard was affirmed by the Supreme Court of Louisiana. Our writ of error presents two federal rights specially claimed. We oppose the execution of the Articles of the Constitution of Louisiana on the ground that they were invalid, being in conflict with the Constitution of the United States as to the contract clause and the Fourteenth Amendment. Those articles were held valid, and we had a right to our writ.

Another suggestion may show the extraordinary plight in which the defendants in error have been placed by the discrepancy between the *motifs* in the opinion of the Supreme Court of Louisiana and the dispositive portions of its judgment affirming the judgment of the lower court. If we obtain no relief here, the judgment of the Civil District Court for the Parish of Orleans, standing as it does affirmed by the Supreme Court of Louisiana, could be, and would be, enforced by a process of contempt, and in other ways, according to its terms, and without regard to the *motifs* in the opinion of the Chief Justice of Louisiana. The Board of Liquidation would be told :

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(1) That the Act of 1890 and the Amendment of 1892 do not contemplate any issue of bonds inferior to others theretofore emitted under that legislation; and

(2) The judgment of the District Court being affirmed without any reservation in this regard, is affirmed according to its terms, and is not to be modified or impaired by any enunciations or expressions in the opinion of the Supreme Court of Louisiana in favor of our rights.

It seems plain to us that the admission of our rights in the opinion of the Supreme Court of Louisiana and the denial of those rights by its judgment, affirming a denial by the court of first instance, entitle us to relief. If the decrees of the State Court be executed, every right recognized in the opinion of the Supreme Court of Louisiana will be swept away by its decree. There must be some remedy for such an extraordinary condition of things, and the remedy may be found in reversing the judgment of the Supreme Court of Louisiana and making such proper orders as may safeguard our federal rights. And we, therefore, ask that the judgment which has been brought here for review may be reversed, and that such other and further orders and judgment may be made as may be proper in the premises.

WILLIAM WIRT HOWE,
WALKER B. SPENCER,
Of Counsel for Drainage Commission of New Orleans, one of the Plaintiffs in Error.

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No. 119. (& 114)
Appendix to Br. for Drainage

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Filed Dec. 4, 1900.

SUPREME COURT OF THE UNITED STATES.

October Term, 1900.

No. 119 [114].

THE DRAINAGE COMMISSION, Etc., Plaintiff in Error,

versus

STATE EX REL. MISS L. B. WILDER Et Als., Defendants in Error.

APPENDIX TO BRIEF OF PLAINTIFF.

Drainage Acts of 1896 and 1898.

T. H. THOMASON, PRINT, 528 NATCHEZ STREET, N. O.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 119 [114].

THE DRAINAGE COMMISSION, ETC., PLAINTIFF IN ERROR,

versus

STATE EX REL. MISS L. B. WILDER ET ALS., DEFENDANTS IN ERROR.

APPENDIX TO BRIEF OF PLAINTIFF.

Drainage Acts of 1896 and 1898.

ACT No. 114]

AN ACT

To provide for the drainage of the City of New Orleans; to establish the Drainage Commission of New Orleans; to provide ways, means and funds for such drainage; to provide for the issue and payment of bonds and to direct the co-operation of the Board of Commissioners of the Orleans Levee District:

Whereas, due notice under Article 48 of the Constitution has been given of the intention to apply to the Legislature for the passage of this Act:

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, That a board is hereby established, to be called the Drainage Commission of New Orleans,

which shall be composed as follows, to-wit: Of the Mayor of New Orleans; the Chairman of the Council Committees of Finance, of Budget, and of Water and Drainage; of the President of the Board of Commissioners of the Orleans Levee District, and two other members of said board, selected by it; of the President of the Board of Liquidation of the City Debt of New Orleans, and one other member of said board, to be selected by it, being nine members in all; and said Commission, by its said name, shall have all the powers and succession of a body politic and corporate.

SEC. 2. Be it further enacted, etc., That said Commission shall organize by selecting one of its members as President and some competent person as Secretary. It shall have power to make by-laws and rules for its own government, and to define the duties of its officers and committees, and to change the same by a vote of two-thirds of its members. It shall hold regular meetings on such days as it may determine, and shall call special meetings, as may be provided for in its by-laws. All meetings of said Commission, or any committee, or special committees it may appoint, shall at all times be open and public, and its books, papers, documents and records shall be public records.

And it is hereby made the duty of the government of the City of New Orleans to provide suitable offices for said Commission, wherein its meetings shall be held and its books, papers, documents and records shall be kept.

SEC. 3. Be it further enacted, etc., That that portion of the funds in the hands of the Board of Liquidation under the provisions of Sections 6 and 10 of Act No. 110 of the General Assembly of Louisiana of 1890, accruing to public

works, etc., from January 1, 1898, is hereby dedicated and applied to the purposes of this act; and all monies and funds now under the control of the City of New Orleans, and hereafter to be received, arising from the sale of street railroad franchises or other franchises, are also hereby dedicated and applied to the purposes of this act.

All monies or funds thus hereby dedicated shall be drawn and expended by said Drainage Commission by checks signed by the president and secretary and countersigned by the mayor.

SEC. 4. Be it further enacted, etc., That said Commission shall have full power to control and execute the drainage of the City of New Orleans, and may proceed to execute and carry out substantially the plan for such drainage, adopted by the Council of said City, by Ordinance 10,091, Council Series, approved July 10, 1895, so far as it may find said plan desirable and practicable, with the right, however, to modify the same as in its judgment circumstances may require.

It shall have power to make rules and regulations for the protection and conservation of all works under its control, both completed and uncompleted, and of all works necessary or incidental thereto, and any violation of the rules and regulations established by the said Commission, and duly promulgated in the Official Journal, shall be punished by a fine not exceeding $25 for each offense, or by thirty days' imprisonment for each offense, or by both, in the discretion of the Recorder.

It shall be the duty of the City of New Orleans, at the request of said Commission, to transfer to the custody and control of the said Commission so much of the

existing drainage plant or plants of the City of New Orleans as the said Commission may deem necessary for their purposes; provided, however, that the said City of New Orleans shall always, out of her general budget, provide the necessary funds to run all drainage machines now in existence or that may hereafter be established by the Commission, the true intent and meaning of this act being that the funds of the Commission shall be applied only to the construction of permanent public works, and no part thereof shall be applied to the operation of said works.

Nothing in this section shall be construed as compelling the Commission to take charge of any of the present existing systems unless in their judgment it may be advisable to do so.

SEC. 5. Be it further enacted, etc., That all work done, or supplies and materials ordered, by said Commission, of every kind and nature, except emergency work in times of extreme peril from storm or flood, shall be let by contract to the lowest responsible bidder, by sealed proposals, or by public auction, as the Commission may determine, after at least thirty days' advertisement in two newspapers in the City of New Orleans, on approved specifications, one of which specifications shall always be that the contractor shall give bond, with security satisfactory to the Commission in at least one-fifth of the amount of his bid for the faithful performance of his contract; and in case the work estimated by the said specifications shall exceed the sum of fifty thousand dollars, bids for the same shall be similarly advertised in New York and Chicago, as well as in the City of New Orleans.

In all cases the right shall be reserved by the Commission to reject any and all bids.

SEC. 6. Be it further enacted, etc., That the works performed by said Commission shall, so far as possible, be done in such manner as to benefit all parts of the city without discrimination as to locality, and in order to raise funds for the purpose of doing such work speedily and on an extensive scale, said Drainage Commission of New Orleans shall have power to issue and dispose of its negotiable bonds to an amount not exceeding five millions of dollars in denominations of $20, $50, $100, $500 and $1000, bearing interest at a rate not exceeding five per centum per annum, payable semi-annually, to be sold by said Commission at not less than par. Said bonds shall have forty years to run, and shall, when issued and not before, be executed by the president and attested by the secretary, under the seal of the Commission, shall be payable to bearer and shall have semi-annual interest coupons attached bearing the engraved signature of the president. All monies and funds dedicated and applied by this act to the purposes thereof are consecrated to the payment of the principal and interest on said bonds, and the Commission, after the year 1920, shall have the right to call in by lot not exceeding two hundred thousand dollars of said bonds in July of each year. The numbers of the bonds so drawn by lot, together with notice that such bonds will be paid on the ensuing first of January and that interest thereon will then cease, shall be published in a New Orleans newspaper for thirty days.

SEC. 7. Be it further enacted, etc., That all the provisions of this act respecting the dedication and application

of funds and money shall constitute a contract with the holder or holders of bonds issued as aforesaid, the obligation of which contract shall not be impaired and may be enforced by any holder of said bonds by proceedings of mandamus and injunction or by other proper proceedings in court.

SEC. 8. Be it further enacted, etc., That said Commission shall have power to employ such engineers, and counsel as it may find necessary in the progress and execution of its work; and shall have the power to expropriate property according to existing laws, by legal proceedings in its name and the right in all streets, and in and over all lands of the State and city in New Orleans or in the parish of St. Bernard, is hereby granted to said Commission for any of its works.

SEC. 9. Be it further enacted, etc., That it shall be the right and duty of the Board of Commissioners of the Orleans Levee District, in the exercise of its obligations under Act 79 of 1892, to co-operate with the Drainage Commission in executing the plans of said Commission, and in order to make such co-operation more effective the said Board of Commissioners of the Orleans Levee District shall have the power and authority to continue the levy of the tax of one mill on the dollar, provided for in Section 5 of Act 93 of 1890, until the completion of the levee and drainage systems of the City of New Orleans.

SEC. 10. Be it further enacted, etc., That the said Commission shall, semi-annually, beginning on the first day of January, 1897, make to the common council of the City of New Orleans a full and detailed report of all sums received and sums expended, the purposes for which ex-

pended, and a statement of the progress and character of the work contracted for and performed during the previous six months; and the said Commission shall, from time to time, if so required by the council, present special reports as they may be demanded.

SEC. 11. Be it further enacted, etc., That no member of the said Commission shall receive any compensation whatever for his services as a commissioner, except traveling expenses incurred in behalf of the Commission.

SEC. 12. Be it further enacted, etc., That no member of said Commission shall ever be interested in any contract or in the profits of any contract made by said Commission, nor for six months after the termination of his connection with the Commission, under the penalty of the absolute nullity of said contract, nor shall any member of said Commission ever be surety for any contractor or officer of the Commission.

SEC. 13. Be it further enacted, etc., That all laws and parts of laws in conflict with this act are repealed, and this act shall be liberally construed to effect its object.

Approved July 9th, 1896.

ACT No. 63]

AN ACT

To amend and re-enact Sections 6, 7 and 8, of Act No. 114 of 1896, entitled "An Act to provide for the drainage of the City of New Orleans; to provide ways, means and funds for such drainage; to provide for the issue of bonds, and to direct the co-operation of the Board of Commissioners of the Orleans Levee District;" and to provide for flushing in connection with such drainage.

Whereas, due notice under Article 50 of the Constitu-

tion has been given of the intention to apply to the General Assembly for the passage of this Act:

SECTION 1. Be it enacted by the General Assembly of the State of Louisiana, that Sections 6, 7 and 8, of Act No. 114 of 1896, approved July 9th, 1896, be and the same are hereby amended and re-enacted so as to read as follows:

SEC. 6. Be it further enacted, etc., That the works performed by said Commission shall, so far as possible, be done in such manner as to benefit all parts of the City without discrimination as to locality, and in order to raise funds for the purpose of doing such work speedily and on an extensive scale, said Drainage Commission of New Orleans shall have the power to issue and dispose of its negotiable bonds to an amount not exceeding one million five hundred thousand dollars, in denominations of $1000 each, bearing interest at the rate of five per centum per annum, payable semi-annually, to be sold by said Commission at not less than par. Said bonds shall have forty years to run from November 1, 1897, and shall when issued, and not before, be executed by the President and attested by the Secretary under the seal of the Commission; shall be payable to bearer, and shall have semi-annual interest coupons attached bearing the engraved signature of the President. Such bonds may also be registered under such regulations as said Commission may prescribe. All monies and funds dedicated and applied by this act to the purposes thereof are primarily consecrated to the payment of the interest on said bonds, and the redemption of the principal thereof, as hereinafter provided, but any surplus of said funds inuring to said Commission from taxes of 1899, 1900, 1901 and 1902, and from other sources prior to

January 1st, 1903, not required to pay current interest on said bonds, may be used for the general purposes of said Commission. The Commission, after year 1920, shall have the right, and it shall be its duty, to call in and pay not exceeding two hundred thousand dollars of said bonds in July of each year, and in the order of their issue, beginning with number one. The numbers of the bonds so called in, together with notice that said bonds will be paid on the ensuing first of January, and that interest thereon will then cease, shall be published in a New Orleans newspaper for thirty days. Said Commission may also agree with any holder of said bonds that the same may be called in at any time after November 1, 1899. Any bonds which may be hereafter authorized in excess of above amount of $1,500,000 shall be subordinate to issue above limited.

SEC. 7. Be it further enacted, etc., That all the provisions of this act, respecting the dedication and application of funds and monies shall constitute a contract primarily with the holder or holders of said bonds, as aforesaid, to the extent aforesaid, and also with each and every person or corporation that may have entered into contracts with the said Commission; and the obligation of said contract as to dedication and application of funds and monies shall not be impaired, and may be enforced by any holder of said bonds, or by any contract creditor of said Commission, by proceedings of mandamus and injunction, or by other proper proceedings in court.

And in case said Drainage Commission shall cease to exist for any cause prior to the full payment of said bonds in principal and interest, or shall fail to comply with the provisions of this act in regard to the application of said

funds and money, the Board of Liquidation of the City Debt shall be charged with the right and duty of applying said funds and monies to the payment of said bonds in principal and interest according to the provisions and intent of this act.

SEC. 8. Be it further enacted, etc., That said Commission shall have power to employ such engineers and counsel as it may find necessary in the progress and execution of its work, and shall have the power to expropriate property according to existing laws by legal proceedings in its name, in the Parishes of Orleans, Jefferson or St. Bernard; and the right in all streets and in and over all lands of the State in the Parish of Orleans and of the City of New Orleans, and in and over all lands of the State in the Parishes of Jefferson and St. Bernard, is hereby granted to said Commission for any of its works. Said Commission shall also have the right to arrange its power houses and the disposition of the electric energy thereby generated, in such way, and to construct such conductors, motors, flushing apparatus and other appliances, as will enable the City of New Orleans to flush gutters from the Mississippi River.

Approved July 9, 1898.

No. 369
Brief of Lazarus for D. & C.
Filed Oct. 30, 1899.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 369

THE BOARD OF LIQUIDATION OF THE CITY DEBT AND THE DRAINAGE COMMISSION OF NEW ORLEANS, PLAINTIFFS IN ERROR,

versus

THE STATE OF LOUISIANA EX REL. MISS L. B. WILDER ET ALS., DEFENDANTS IN ERROR.

Writ of Error to the Supreme Court of Louisiana.

BRIEF FOR DEFENDANTS IN ERROR, ON MOTION TO DISMISS AND AFFIRM.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. .....

THE BOARD OF LIQUIDATION OF THE CITY DEBT AND THE DRAINAGE COMMISSION OF NEW ORLEANS, PLAINTIFFS IN ERROR,

versus

THE STATE OF LOUISIANA EX REL. MISS L. B. WILDER ET ALS., DEFENDANTS IN ERROR.

Writ of Error to the Supreme Court of Louisiana.

BRIEF FOR DEFENDANTS IN ERROR, ON MOTION TO DISMISS AND AFFIRM.

STATEMENT OF THE CASE.

The Constitution of the State of Louisiana, adopted on May 12th, 1898, embraces the following articles:

"Art. 315. The City of New Orleans is hereby authorized and required to examine into and assume payment of the obligations of the Board of Directors of the Public Schools of the Parish of Orleans for unpaid salaries of school teachers and portresses, and of other legitimate claims against said School Board for the years 1882, 1883,

and 1884, and for unpaid salaries of school teachers and portresses for the years 1885, 1886, and 1887, now in the hands of the original owners who have in nowise parted with their rights of ownership, or pledged the same, as may be found by said City to be equitably due by said Board. All claims to be examined into and assumed by the City of New Orleans under this article shall be presented to and filed with the City Council of said City within ninety days after the adoption of this Constitution, and not thereafter.

"Art. 316. The City Council shall issue certificates of indebtedness to the owners of said claims, when examined and found to be equitably due, and all such certificates shall be paid by the Board of Liquidation. If any of the claims aforesaid be rejected by the said City Council, the decisions thereon may be reviewed by any court of competent jurisdiction, and the judgment of the Court thereon shall, if in favor of claimant, be likewise paid by the Board of Liquidation.

"Art. 317. The funds requisite to pay said claims shall be provided by said Board of Liquidation by the sale of a sufficient number of the Constitutional Bonds of the City of New Orleans of the issue provided for by Act No. 110 of the General Assembly for the year 1890, and by the amendment to the Constitution of the State submitted to the people by said act and adopted at the general election in 1892."

Under the mandatory directions of the articles referred to, the City of New Orleans examined into the accounts of the relators, assumed the indebtedness and issued certificates to evidence its assumption, which were presented to the Board of Liquidation of the City of New Orleans for payment, with a demand on behalf of the relators, that the Board of Liquidation should, in obedience to the directions of Art. 317, sell a sufficient number of the Constitutional Bonds of the City of New Orleans not disposed of (their issue being provided for in Act 110 of the Gen-

eral Assembly of 1890, and the amendment to the Constitution of 1879, submitted to and adopted by the people of the State at the general election in 1892), to realize the sum necessary, and, out of the proceeds thus realized, to pay, as directed by the Constitution, the demands of the relators.

The refusal of the Board of Liquidation to comply with the demand of the relators, provoked an application on the part of the latter for a mandamus to enforce obedience, on the part of the Board, to the constitutional direction indicated in the articles referred to. Resistance to the issuance of a peremptory writ of mandamus was made, on the ground that the Board of Liquidation stood toward the bondholders in the relation of a trustee; that, under Act 110 of 1890 and the Constitutional Amendment of 1892, the bonds authorized to be issued were for the purpose exclusively of retiring the outstanding bonded indebtedness and for evidences of indebtedness which at that time were fundable; that any attempt to divert the bonds authorized to be issued for the limited purposes stated, or to apply them to any purpose other than those expressly provided for, was a violation of the rights of the outstanding bondholders, inasmuch as it impaired the obligations of their contracts, and was in violation of Sec. 10, Art. 1 of the Constitution of the United States, and also of the Fourteenth Amendment of the Constitution; that therefore the said legislation directing the disposition of the bonds for the purposes stated in said constitutional provision, was void for repugnancy to the Constitution of the United States, and was not enforceable against the Board of Liquidation.

In the mandamus proceeding, the Drainage Commission

of the City of New Orleans intervened, asserted its corporate existence and its right to one-half of the surplus derived from the one per cent. tax under Act 110 of 1890, and which is averred was dedicated to the drainage of the City of New Orleans; that upon the faith of this dedication of the one-half of the surplus of the 1 per cent. tax, as provided in Act 110 of 1890, contracts had been made and obligations incurred by said Drainage Commission; and that any attempt to diminish said surplus or to divert it, impaired the rights of said Drainage Commission, and the holders of its bonds and obligations, and was void because of repugnancy to that Article of the Constitution of the United States which prohibits the States from passing any law impairing the obligations of contracts.

To the intervention of the Drainage Commission, relators filed an exception that said Commission was without interest in the controversy, and was without right to participate in the surplus of the 1 per cent. tax provided for in Act 110 of 1890.

Upon the issues thus formulated, evidence was administered and the writ of mandamus, in the court of first instance, made peremptory against the Board of Liquidation, directing its compliance with the constitutional enactment, maintaining the exception of the relators to the intervention of the Drainage Commission and dismissing the intervention for want of interest.

From this judgment, the Board of Liquidation and the Drainage Commission prosecuted an appeal to the Supreme Court of the State of Louisiana, suspending the operation of the judgment until a hearing in that court. After

full hearing in the Supreme Court of Louisiana, the judgment of the lower court, in so far as it directed a peremptory writ of mandamus, was affirmed. The judgment was reversed, in so far as it dismissed the intervention of the Drainage Commission, and the intervention was reinstated by the decree, the Court finding that it had sufficient interest in the pending controversy to intervene for the protection of its rights.

On the decree of the Supreme Court of Louisiana, error was assigned and the record brought here under a writ of error issuing from this Court to the Supreme Court of Louisiana, the assignments of error being substantially those set out in the answer.

Defendants in error, after compliance with paragraph 4 of rule 6, move the Court to dismiss the writ and affirm the judgment.

There is no substantial dispute between plaintiff and defendant in error as to any fact in the case. That with which the Court will have to deal, to which its attention is attracted, and which calls for its decision, are questions of law. Those questions arise upon relators' petition for a writ of mandamus, the Board of Liquidation's return, the intervention of the Drainage Commission, the exception of the relators to that intervention, and the opinion and judgment of the Supreme Court of Louisiana. That part of the record necessary to an intelligent appreciation of the issues and their disposition, has been printed as an appendix to the argument submitted in support of the motion to dismiss and affirm. Walston vs Nevin, Roche vs. Nevin, 128 U. S. 179.

On Motion to Dismiss.

The learned counsel for plaintiffs in error, in discussing the motion, has overlooked the modification of the Judiciary Act of 1789 by the Practice Act of 1867 (see page 18 of brief of plaintiffs in error). As the Practice Act has been construed uniformly by this Court since the case of Murdoch vs. Memphis, 20 Wall., the opinion of the Court to which the writ of error runs is considered in connection with the issues and the decree, and if the decision is not adverse to the right asserted under the Constitution, laws, or treaties of the United States, there is nothing for this Court, on error, to review; and, as a consequence, the appeal is dismissed and the judgment affirmed. A review of the original doctrine and its modification is forcibly stated by Mr. Justice Harlan in Gross vs. United States Mortgage Co., 108 U. S. 484. He said:

"The defendant in error insists that it does not appear from the record that the *decision* of the Supreme Court of Illinois was adverse to any asserted right under the Constitution, laws, or treaties of the United States, nor that the judgment or decree complained of could not have been passed without the determination of any such Federal question. * * * *This proposition depends upon the inquiry, whether the opinion of the State Court, made part of the transcript, can be examined for the purpose of ascertaining the grounds upon which that Court based its final decree.*

"In Gibson vs. Chouteau, 8 Wall. 314; Rector vs. Ashley, 6 Ib. 142, and Williams vs. Norris, 12 Wheat. 117, it was ruled that the *opinion* of the State Court constituted no part of the record, for the purpose of determining whether this Court will re-examine its final judgment or decree. And in Parmelee vs. Lawrence, 11 Wall. 38, where the question arose as to the effect to be given to the certificate of the Chief Justice of the State Court, showing that

a Federal question was raised and decided adversely to the party bringing the case here for review, it was said:

"'If this Court should entertain jurisdiction upon a certificate alone, in the absence of any evidence of the question in the record, then the Supreme Court of the State can give the jurisdiction in every case where the question is made by counsel in argument.'

"To the same effect are Lawler vs. Walker, 14 How. 149, and Railroad vs. Rock, 4 Wall. 177. But in Murdock vs. City of Memphis, 20 Wall. 590, the subject was again under consideration, by reason of the omission from the Act of 1867 of that provision in the 25th Section of the Act of 1879, restricting this Court, when reviewing the final judgment or decree of the highest court of a State, to the consideration of such errors as appeared on the face of the record. It was there said, that in determining whether a Federal question was raised and decided in a State Court:

"'This Court has been inclined to restrict its inquiries too much by this express limitation of the inquiry 'to the face of the record.' 'What was the record of a case,' the Court observed, speaking by Mr. Justice Miller, 'was pretty well understood as a common law phrase at the time that statute was enacted. But the statutes of the States, and new modes of proceeding in those courts, have changed and confused the matter very much since that time. It is in reference to one of the necessities thus brought about that this Court long since determined to consider as part of the record the *opinions* delivered in such cases by the Supreme Court of Louisiana. Grand Gulf R. R. Co. vs. Marshall, 12 How. 165; Cousin vs. Blanc's Executors, 19 Id. 202. And though we have repeatedly decided that the opinions of other State courts cannot be looked into to ascertain what was decided, we see no reason why, since *this restriction is removed*, we should not so far examine those opinions, when properly authenticated, as may be useful in determining that question. We have been in the habit of receiving the certificate of the Court, signed by its Chief Justice or presiding Judge, on that point, though not as conclusive, and these opinions are

quite as satisfactory, and may more properly be treated as part of the record than such certificates.'

"The opinion of the State Court in the present case is properly authenticated. * * *

"We cannot, therefore, doubt that in the existing state of our law, *it is our duty to examine the opinion of the Supreme Court of Illinois*, in connection with other portions of the record, for the purpose of ascertaining whether this writ of error properly raises any question determined by the State Court adversely to a right, title, or immunity under the Constitution or laws of the United States, and specially set up and claimed by the party bringing the writ. Any difficulty existing upon this subject is removed by that provision of the Revised Statutes of Illinois, which requires not only that the Justices of the Supreme Court of the State shall deliver and file written opinions in cases submitted to it, but that 'such opinions shall also be spread at large upon the records of the Court.' This statutory provision would seem to bring the case within the rule which permits an examination of the opinions of the Supreme Court of Louisiana to ascertain whether the case was determined upon any ground necessarily involving a federal question within the reviewing power of this Court."

See Articles 89, 91 and 92 of the Constitution of the State of Louisiana of 1898.

It was said by Mr. Chief Justice Waite, in Crossley vs. New Orleans, 108 U. S., in a case in error to the Supreme Court of Louisiana:

"It was settled long ago that in cases coming to this Court from the Supreme Court of Louisiana, the opinion of the Court below, as set out in the record, may be referred to, if necessary, to determine whether the judgment is one we have authority to review." Roby vs. Colehauer, 146 U. S. 159.

In the recent case of Egan vs. Hart, 165 U. S. 189, on error to the Supreme Court of Louisiana, Mr. Justice White, delivering the opinion of the Court, said:

"It is likewise settled that on error to the Supreme Court of Louisiana, *the opinion of that Court is to be treated as part of the record*, and that it may be examined in order to ascertain the questions presented, and this Court may, for the purpose, not of deciding as to the facts, but by way of throwing light upon the findings, look into the entire record."

If, then, the opinion of the Court is considered as part of the record upon which is to be determined whether the decision of the Court, to whom the writ of error is addressed, is adverse to the right or claim asserted by plaintiff in error under the Constitution, laws, and treaties of the United States; and if, upon examination, it should be ascertained that all of the rights asserted under the Constitution and laws of the United States have been recognized and accorded to the party claiming them, then manifestly there is no error that this Court is called upon to review or correct, and the writ, apparently being prosecuted for delay, should, under the uniform jurisprudence of this Court, be dismissed.

In Eustis vs. Bowles, 150 U. S. 361, Mr. Justice Shiras announced the rule:

"It is settled law, that to give this Court jurisdiction of a writ of error to a State Court, it must appear affirmatively, not only that a Federal question was presented for decision by the State Court, but that its decision was necessary to the determination of the cause, and that it was *actually decided adversely* to the party claiming a right under the Federal laws or Constitution, or that the judgment as rendered could not have been given without deciding it." See Harrison vs. Morton, 171 U. S. 147.

Now, independent of every other consideration or question that is presented on the face of the record, conspicuous among which is the right of the Board of Liquidation,

simply an arm of the local government, charged with the administration of the financial affairs of the City of New Orleans, and subject at all times to legislative and *a fortiori* constitutional direction; independent of the question of whether the Drainage Commission is asserting a right under legislative grant and in defiance of the constitutional direction which we shall hereafter discuss—it is perfectly manifest, from an inspection of the opinion of the Supreme Court of Louisiana, that that Court considered the rights asserted by the Board of Liquidation, and that every pretension advanced in the interest of the bondholders under the guise of being their trustee, was recognized and enforced by the Court in the opinion which was pronounced and in according to it, in its assumed representative capacity, the protection of the Constitution of the United States which it set up as a defense for its defiance of the Constitution and laws of the State of Louisiana, its sovereign and creator. This is conceded by the learned counsel in his elaborate argument addressed to this Court in answer to the motion now under consideration; and while he discusses generally legal propositions that are not controverted or questioned, he does not and cannot, with the jurisprudence of this Court, settled by a line of decisions from the 20th Wallace to the present time, of its right and duty to consider the opinion and decree of the State Court, dispute the proposition that every right asserted by him is recognized and protected by the opinion of the Supreme Court of Louisiana; and that the bonds which the Board of Liquidation are directed to dispose of in order to discharge the obligations of relators, are, by virtue of that opinion,

subordinated not only to the bonds already issued and outstanding in exchange for those provided for in the Act of 1890, but also the rights of the Drainage Commission to its participation in the surplus of the 1 per cent. tax, after providing a fund sufficient to meet the interest upon the bonds funded under the Act of 1890 and the Constitutional Amendment of 1892.

The opinion in the cause was delivered by the Chief Justice. An elaborate and careful review of the legislation of Louisiana with reference to the fiscal affairs of the City of New Orleans was made; and when the Court reached the defenses of the Board of Liquidation and those urged by the Drainage Commission, it dealt with them generously and maintained every proposition advanced in their respective behalfs. In delivering the opinion, the Chief Justice said:

"Neither the City nor the Drainage Commission could legally object that the extent or scope of the system of permanent improvement would be restrained by the withdrawal of funds needed to make that system complete or successful. The work could have been stopped at any time, though the rights of contract creditors, as they existed at the date of the action of the convention, could not have been by it impaired. Our examination on this branch of the case, as to the effect of enforcing Articles 315, 316 and 317, of the Constitution, will go no further than to see whether contract creditors having rights upon the permanent improvement fund would be impaired or not. Defendants assume that the mere fact that constitutional bonds should be sold for the purpose of paying the certificates held by relators, or should be given in exchange for those certificates, would of necessity entitle the holders of such bonds to prime the holders of permanent improvement bonds,—bonds drawn against the surplus of the 1 per cent. tax—dedicated to permanent public improve-

ments, and also to necessarily come in on a footing of equality with all the other holders of consolidated bonds, and they maintain, if this be true, the rights of contract creditors under the funding act would be impaired.

"Relators, on the other hand, insist that the only portion of the 1 per cent. tax ever set aside for permanent public improvements was one-half of the surplus produced by the tax which would remain after having retained in the hands of the Board of Liquidation enough to meet the payment in full of a $10,000,000 issue of consolidated bonds, and that therefore it would be legally immaterial to creditors basing contracts on such surplus to whom the other portion of the fund would go. It would be enough for them to know it would not go to them, and relators urge that other holders of consolidated bonds would have no ground of complaint; that they should be permitted to share equally with them from the tax fund, as they had accepted their bonds on the expected basis of coming in concurrence with an issue of ten millions of bonds. That they might be interested that the limit as to the amount of the bonds should not be passed, but they were without legal interest, when the limit should not have been passed, as to who should be the holders of the bonds sharing the fund with them. In support of this last position, they rely upon the decision of the Supreme Court of the United States in Board vs. McComb, 92 U. S. 531. If the collection of the 1 per cent. tax would suffice to pay each year the holders of consolidated bonds issued in taking up or retiring the bonds and claims such as were provided for by Act 110 of 1890 and the Constitutional Amendment of 1892, without any conflict with the bonds ordered to be sold by Article 317 of the Constitution of 1898, the former, of course, would have no cause of complaint; but if, from any cause, the amount of the tax collected would be insufficient for that purpose, we do not think the holders of these latter bonds could force the former to prorate with them the amount in hand. This condition of things is not existing. It may never arise, and, should it arise, the Board of Liquidation would doubtless take steps to distinguish

bonds issued under Article 317 from those which had been otherwise issued. It does not necessarily follow that all claims payable out of a particular tax should stand on a footing of perfect equality as to payment. If, from any legally existing cause, there would be priority of right, there would be priority of payment. We have an example of this in the matter of the priority of preference payment of the salaries of the constitutional officers of the State over warrants for ordinary claims, though all are payable out of the general fund (State vs. Burke, 32 La. An. 1213), and it has been held that amounts needed for the alimony of the City have to be paid out before those for other purposes are paid. Moore vs. City of New Orleans, 32 La. An. 729; Saloy vs. City of New Orleans, 33 La. An. 79. So, also, it sometimes happens, from special circumstances, that the holder of one or more of the same series of notes may hold rights subordinated to those of the holders of the others. If there should be, in the future, any actual conflict of interests, the Board of Liquidation and the parties interested will doubtless have taken steps to be able to protect themselves. We do not take the same view that relators do as to what was meant by, and intended to be conveyed by, the surplus referred to by Act 110 of 1890, Act 114 of 1896, and the Constitutional Amendment of 1892. We think that the lawmakers intended that any portion of the 1 per cent. tax provided for in Act No. 110 not needed for the payment or retirement of the particular bonds or claims therein specially provided for as to payment or retirement, should constitute the surplus of the tax, and that it was not contemplated when the laws were passed, or the amendment of 1892 adopted, that, in order to exhaust any portion of the $10,000,000 originally expected to be needed to pay the existing bonds and the existing claims therein specially enumerated, which might not be necessary for that purpose, new classes of claims should or would be thrown under the provisions of the original funding law. We think the surplus was intended to connect at once and follow immediately behind as to its appropriation the amount beyond that actually needed to carry out the plan

as originally mapped out and planned. The surplus was provisionally ascertained each year in a manner particularly specified, to be readjusted the next in a manner also particularly specified. All the surroundings and circumstances connected with the legislation negative the idea that the surplus mentioned was to be only any surplus over $10,000,000 which might result from the collection of the 1 per cent. tax. We think the Board of Liquidation, the Drainage Commissioners, and those with whom they contracted, were justified in placing that interpretation upon the legislation, and that contract rights based upon the same should be protected from impairment. The convention, while ordering the payment of the certificates held by the relators through sales of consolidated bonds, could not confer upon the holders of such bonds rights which in any way would come in competition with the contract rights of creditors existing against the tax at the time of the adoption of the Constitution. Though there was no mention in the Constitution as to the rank of the bonds which would be issued to take up relators' certificates, that rank resulted from legally existing conditions which could not be constitutionally interfered with. There is no constitutional objection to the convention ordering the board of liquidation to sell bonds to take up the relators' certificates, but there would be constitutional objection to be urged if the effect of the issuing of such bonds would be to place the holders thereof on an equality with the holders of bonds issued to take up the bonds and claims provided for as to their funding and payment by Act No. 110 of 1890, Act No. 114 of 1896, and the Constitutional Amendment of 1892. Duperier vs. Police Jury, 31 La. An. 710; Shields vs. Pipes, 31 La. An. 765. The consolidated bonds which relators seek to have issued upon their prayer will really be drawn against (when issued) any surplus which will remain of the 1 per cent. tax after the payment of all the bonds issued and to be issued by the board of liquidation, under Act No. 110 of 1890, and the Constitutional Amendment of 1892, in order to fund and retire and pay the bonds and debts therein specially enumerated, and

also the bonds issued and to be issued by the drainage commission, under the provisions and authority of Act No. 114 of 1896, to pay the contracts existing at the date of the adoption of the Constitution, which were entered into upon the faith of the surplus directed to be set aside to the credit of the permanent improvement fund by Act No. 110 of 1890, Act No. 114 of 1896, and the Constitutional Amendment of 1892. The effect of this will be to subordinate the rights of holders of bonds issued by the drainage commission to pay for contracts entered into after the adoption of the Constitution of 1898 to those of the holders of consolidated bonds to be issued under the orders of Article 317 of the Constitution of 1898. This may check and impede the work of public improvement, but it is a matter which we cannot control.

"For the reasons assigned, it is hereby ordered, adjudged and decreed, that the judgment of the district court be, and the same is hereby, affirmed, except as to the interest allowed, which interest is hereby reduced from 5 to 4 per cent., costs of appeal to be borne by appellees.

"MONROE, J., takes no part, as he was not a member of the Court when the case was submitted."

"ON APPLICATION FOR REHEARING.
(June 30, 1899.)

"NICHOLLS, C. J. An examination of this cause on the application for rehearing has brought to our notice that, in affirming the judgment of the district court, we affirmed that portion of the same which dismissed the intervention of the Drainage Commission of New Orleans as being without any interest in the cause. A re-examination of the case has brought us to the conviction that our judgment is erroneous in so far as it accorded interest to the relators upon their certificates.

"For the reasons assigned, it is ordered, adjudged and decreed, that our former judgment be amended by setting aside that portion of the same by which interest at 4 per cent. is accorded to the relators, and by which the judgment

of the district court is affirmed in dismissing the intervention of the Drainage Commission. It is now ordered, adjudged and decreed, that the judgment of the district court, in so far as it dismisses the intervention of the Drainage Commission of New Orleans as having no interest in the cause, and in so far as it recognizes the right of the relators to interest upon their certificates, be annulled, avoided and reversed; and it is now ordered, adjudged and decreed, that, recognizing the right of the said Drainage Commission to intervene herein, its intervention be, and it is hereby, reinstated; and it is further ordered and decreed, that that portion of relators' present demand, by which they pray that they may be recognized as entitled and accorded interest upon their certificates, be, and the same is hereby, rejected. And it is further ordered, adjudged and decreed, that the judgment of the district court, except as herein altered and amended, be affirmed and our own judgment, except in so far as herein altered and amended, remain undisturbed. Rehearing refused.

"MONROE, J., takes no part."

Throughout the entire opinion, every right asserted under the Constitution of the United States by the Board of Liquidation or the Drainage Commission, is recognized and enforced, and the bonds that are directed to be sold are subordinated to those already issued and freed from the charge of disturbance or impairment. It is conceded in the argument of the learned counsel for the Board of Liquidation, that such is the force and effect of the opinion of the Supreme Court of Louisiana, against which error is charged. But the complaint is that the decree does not specifically formulate the language quoted in the opinion. It suffices to say that the language of the opinion controls, and whenever the question is presented for determination as to the relative rank of the bonds issued and those to be issued under the article of the Constitution, or they come

into conflict, the determination and adjustment of their relative *status* will be controlled by the opinion and decree in this cause; and that opinion gives to the outstanding bonds the full measure of protection asserted by the Board of Liquidation and the Drainage Commission. Kreeger vs. Shelby Railroad, 125 U. S. 46.

The learned counsel for plaintiffs in error has analyzed with exceptional care and clearness the opinion of the Supreme Court of Louisiana in this case; that analysis, as embodying the Court's findings, being found on page 5 of his brief, and which, for the convenience of this Court, we reproduce. It is a full and complete recognition of every contention advanced both by the Board of Liquidation and the Drainage Commission; and the attack is leveled not against the conclusions reached by the Court in sustaining the points advanced and the protection claimed under the Constitution and laws of the United States, by the Board of Liquidation, and the Drainage Commission, but against the *form* in which the Court's decree is framed—a matter of form and not of substance—and this is not such error as invites, at the hands of this Court, a review.

"The opinion of the Supreme Court of Louisiana, on the appeal of the defendant Board, was to the following effect:

"First. That the Board had the right to set up the unconstitutionality of Art. 317 of the Constitution of 1898, on the authority of the Board of School Directors vs. New Orleans, 42 An. 96.

"Second. That the operation of Art. 317 is restrained by the Constitution of the United States.

"Third. That the Constitutional Convention had the right to determine for itself, free from legislative and constitutional control, the extent to which permanent improve-

ments should be made within the limits of the City of New Orleans, and the amount to be expended for that purpose.

"Fourth. That the surplus referred to in the Acts of 1890 and 1896 and the Constitutional Amendment of 1892, was not, as contended by relators, the surplus which would remain after provision had been made for an issue of $10,000,000 of constitutional bonds, as provided by the amendment, but that it was the residue of any portion of the tax provided for by Act 110 of 1890, and the amendment, which was not needed for the payment and retirement of the particular bonds actually issued, and the claims specially therein provided for.

"That the Board of Liquidation and the Drainage Commission, and those with whom they had contracted, were justified in placing that interpretation upon the legislation and contract rights based upon the same.

"Fifth. That the Convention, while ordering the payment of the certificates held by relators, through sales of constitutional bonds, could not confer upon the holders of these rights bonds which would in any way come in competition with the contract rights of creditors existing against the tax at the time of the adoption of the Constitution; that though there was no mention in the Constitution as to the rank of the bonds that would be issued to take up relators' obligations, that rank resulted from legal condition, which could not be constitutionally interfered with; that while there was no constitutional objection to the Convention ordering the Board of Liquidation to sell bonds to take up relators' certificates, there would be constitutional objection if the effect of the issuing of such bonds would be to place the holders thereof on an equality with the holders of bonds issued to take up the bonds and claims provided for as to their funding and payment by Act 110 of 1890, Act 114 of 1896, and the Constitutional Amendment of 1892.

"Sixth. That the constitutional bonds which relators seek to have issued, would really be drawn against any surplus which would remain of the 1 per cent. tax after the payment of all bonds issued and to be issued by the

Board of Liquidation under Act 110 of 1890, and the Constitutional Amendment of 1892, in order to fund, retire, and pay the bonds and debts therein specifically enumerated; and also bonds issued and to be issued by the Drainage Commission, under the provisions and authority of Act 114 of 1896, to pay contracts existing at the date of the adoption of the Constitution, which were entered into upon the faith of the surplus directed to be set aside to the credit of the Permanent Public Improvement Fund by Act 110 of 1890, and Act 114 of 1896, and the Constitutional Amendment of 1892.

"Seventh. That the effect of this would be to subordinate to the rights of holders of bonds issued by the Drainage Commission to pay for contracts entered into after the adoption of the Constitution of 1898, to those of the holders of the constitutional bonds issued under Article 317.

"It would thus appear from the opinion, that every ground assigned by defendant as a reason for its non-compliance with Article 317, has been maintained by the State Supreme Court, and its refusal to obey the command of Article 317, and every defense that it raised to the suit of relators, which was not to obtain the relief which is outlined in the opinion, but to enforce the rights which are in terms undertaken to be conferred by Article 317, differing *in toto* from what the State Supreme Court in its *opinion* intended to award, is affirmed to be correct and well founded in law."

Independent of the considerations addressed to the Court in support of the motion to dismiss, and those which we shall hereafter advance on the motion to affirm, we respectfully submit that the Board of Liquidation of New Orleans is without legal right or authority to prosecute this writ of error or to be heard in its support, and that the Drainage Commission is without interest in the controversy, and its writs should be dismissed. We shall discuss briefly, under separate heads, the propositions announced.

A.

The Board of Liquidation of the City of New Orleans is without right or authority to prosecute this writ of error, or to be heard in its support.

Since the creation of that Board, it has arrogated to itself a measure of authority and power, independent of the State of Louisiana, its creator, which is justified neither by the law which called it into existence, nor by the conference of legislative authority since its creation.

In 1879 the Constitution directed that the General Assembly should enact legislation proper to liquidate the indebtedness of the City of New Orleans, and apply its assets to the satisfaction thereof. Art. 254, Constitution of 1879. Acting under this constitutional mandate, the Board of Liquidation was created by Act 133 of 1880, its powers extended and its administration enlarged with reference to the class of debts that were to be liquidated, under Act —— of 1882 and —— of 1884. It received, under Act 110 of 1890, and the amendment of 1892, constitutional recognition, with powers defined and limited. It was nothing more, under the legislation to which we have referred, than an arm of the City government, its members trusted clerks of the City, charged with the application of the City's property and its assets, with such taxes as it was entrusted with, to the payment of the City's floating and bonded indebtedness. It was at all times subject to constitutional or legislative direction, with the right reserved to those whose interests were affected, to prevent any encroachment upon their rights by legislation, constitutional or otherwise, which in its effect and operation would impair the obligation of existing contracts. These

are the views substantially expressed by this Court as to the relations between the Board and the City, in the case of Board of Liquidation vs. Louisville & Nashville Ry., 109 U. S. 228. In the case referred to, this Court, speaking through the Chief Justice, said:

"It must be borne in mind that all the legislation involved relates to the distribution of the powers of the City government among the different departments. As the question is presented to us, no contract rights need protection. Whether the Board of Liquidation is a corporation that can sue in its own name, or that can be sued, is not at all important, for even if it be a corporation, it is in effect nothing more than one of the departments of the City government, charged with the duty of controlling and directing matters relating to the bonded debt. Even though the effect of Section 5 of the Act of 1880 was to pledge the property of the City not dedicated to public use to secure the payment of the public debt, there was nothing to prevent the Legislature from revoking the pledge until contract rights had in some way intervened. It is agreed that no new bonds were ever issued by the Board under the authority or upon the faith of the Act of 1880 before the new charter was granted, and Act No. 81 of 1882 was passed before anything was done in the way of extending or renewing bonds under Act No. 58 of the same year. The result of the whole legislation is, therefore, that, in 1880, the Board of Liquidation was created and given power to dispose of and sell the property of the City not dedicated to public uses, and out of the proceeds pay the public debt; but before any new rights had accrued under this power, the control and disposition of batture property not needed for public uses was withdrawn from the Board and given to the City Council, and the proceeds of the sales and leases of public privileges and franchises were appropriated to the payment of the expenses of public improvements which were permanent in their character.

"Whether the money realized from this compromise is to be applied to the payment of the public debt or to make

permanent improvements, we do not undertake to decide, but that the compromise itself was within the departmental authority of the City Council, and not subject to the control of the Board of Liquidation, is to our minds clear."

These expressions of this Court fix definitely and decisively the relation of the Board of Liquidation to the municipality of New Orleans. It is not an independent organization, in the sense in which it assumes to stand before the Courts, but, in the language of the Chief Justice, "It is nothing more than one of the departments of the City government, charged with the duty of controlling and directing matters relating to the bonded debt."

And it is an assumption upon its part for which there is absolutely no justification either in the Constitution or laws of the State, that it stands in the character of *trustee* toward the bonds issued; and that it, representing the debtor, is the trustee of every dollar of outstanding obligations of the City, and is free from the legislative or constitutional control of its creator. It is a trustee in the same sense that every debtor is charged with the preservation of his property for the use and behoof of his creditors, holding it subject to that legal and moral pledge with which a debtor's property is at all times impressed until the payment of his obligations. The people of Louisiana could at any time dismember the Board of Liquidation, provided that in so doing the tax dedicated to the payment of the bonds is preserved intact, and there is no impairment of any obligations that the City assumed, and under which it rests as long as the obligations stand undischarged. The City of New Orleans could not defy, by open repudiation,

the mandate of the people expressed in their Constitution, and no department of the City government is invested with that power or authority, except in so far as the attempt is made to violate a higher law, the Constitution and laws of the United States. The bondholders and the contract creditors of New Orleans or of the Drainage Commission, are not here questioning or contesting the validity of this constitutional direction. Their rights have been abundantly protected by the opinion of the State Court, and they cannot be affected or concluded by anything that takes place in this proceeding; and it does not lie with an arm of the City government, the Board of Liquidation, to be heard assailing the Constitution and laws of its creator. A corporation charged with a public duty, as the servant of the people, ought not to be heard attacking the fundamental law of the State under which it exercises its corporate rights, unless it clearly and manifestly impairs its contract obligations. Cooley's Constitutional Limitations, 196; and People vs. Railway, 15. Wend. 113.

B.

The Drainage Commission of New Orleans, intervening and prosecuting the writ of error herein, is without interest in this controversy, and its writ should be dismissed.

The intervention of the Drainage Commission, asserting contract rights in the surplus of the 1 per cent. tax, invites consideration as to its interest in this controversy, and its right to assert vicariously the unconstitutionality of the articles of the Constitution of the State of Louisiana, which direct the Board of Liquidation to sell, of the undisposed of City bonds issued under Act 110 of 1890, an amount

sufficient to discharge the obligations assumed by the City and due the relators in this case. What interest has the Drainage Commission in the 1 per cent. tax levied under Act 110 of 1890, and the Constitutional Amendment of 1892, and in what manner are its rights affected, and its contract obligations, if any, impaired or diminished? If the Drainage Commission is without interest in the fund arising from the 1 per cent. tax, or the surplus arising therefrom, it indisputably has no right to intervene in this proceeding and assert the unconstitutionality of a law which in no manner affects or disturbs it; and therefore without interest in defeating the constitutional direction, and without right to prosecute and to be heard in support of its writ of error.

We submit that the Drainage Commission is without interest in this controversy, Act 110 of 1890 is, by virtue of the Constitutional Amendment of 1892, a part of said amendment, and is to be considered as if the whole act, in its substantial parts, was embodied in the amendment. The dedication of one-half of the surplus of the 1 per cent. tax to works of public improvement is, therefore, by virtue of Act 110, a constitutional mandate. See Sec. 8, Act 110. The right to appropriate the surplus to works of public improvement, and the character of the work, are by constitutional direction confided to the City Council with supervisory power in another branch of the city government, to-wit., the Board of Liquidation. No part of the surplus arising from the 1 per cent. tax can be paid out, even for works of permanent public improvement, unless ordinanced for by the Council of the City of New Orleans, and approved by the Board of Liquidation. See

Sec. 10 of Act 110. The limit thus placed by constitutional direction upon the disbursement of the surplus of the 1 per cent. tax, is in furtherance of the constitutional mandate which guarantees to the people of the City of New Orleans the selection of their own officers to administer their affairs, and who were entrusted by the people of this municipality with the disposition of the taxes which they contribute to the support and maintenance of the municipal government. See Art. 253, Constitution of Louisiana of 1879.

The City Council has not dedicated any part of the surplus of the 1 per cent. tax provided for by Act 110 of 1890 to the work of drainage. There was an ordinance passed in 1892, dedicating the surplus to works of drainage, but that ordinance was subsequently repealed. (See Record). And this before the organization of the Drainage Commission, intervening herein, and before any contracts were entered into which looked to the fund for their payment. Ordinance 10,091, C. S., referred to in the act creating the Drainage Commission (see Sec. 4, Act 114 of 1896) is simply an ordinance approving a *plan* of drainage to be put into execution, without the appropriation or dedication of any part of the surplus of the 1 per cent. tax to the payment of said work; and this is emphasized by the provision in the ordinance making appropriations out of the surplus of the 1 per cent. tax, limited to the expense of making a topographical survey of the City of New Orleans for the purpose of a *plan* of drainage. Flynn's Digest of New Orleans Ordinances, p. 268. The *plan* thus formulated by the Council, under the ordinance referred to, is by the Legislature only adopted as far as prac-

ticable, with the right in the Drainage Commission to modify the same "as in its judgment circumstances may require." The ordinance of the Council does not dedicate to the work of drainage the surplus tax arising under Act 110 of 1890, but only provides for the expense necessary to prepare detailed plans and specifications for the execution of the work of drainage. Up to this time, there has been no appropriation or dedication of any part of the surplus tax arising under Act 110 of 1890, subjected by constitutional direction to the control of the City Council, nor has there been any appropriation or dedication by the City Council of the tax to any works of public improvement, and none to the Drainage Commission.

Act 114 of 1896, creating the Drainage Commission, being ordinary legislation, cannot disturb, affect, or control the constitutional direction embodied in Act 110 of 1890, and cannot in its operation withdraw from the administration of the City's officials who, by constitutional direction, are charged with the duty of applying the surplus tax under the act, to such works of public improvement as in their judgment will best subserve the public's interest. In order to withdraw from the operation and control of the Common Council of the City of New Orleans, the right, in the exercise of its best judgment, to appropriate the surplus of the 1 per cent. tax to works generally of permanent public improvement, and restrict its operation and dedication to the work of drainage, it requires legislation *of equal dignity* with the grant conferring the power. The legislation of 1896, with reference to the Drainage Commission, is not of the same character or the same dignity as the constitutional direction. Therefore, in

so far as there is any conflict between the two, the legislation of 1896 must yield, and the power vested in the Council exercised independently of the legislative direction and by virtue of the constitutional mandate. The doctrine announced is recognized and enforced by the Supreme Court of Louisiana in Fisher vs. School Directors, 48 La. An. 1079. Under Act 136 of 1894, the Legislature undertook to direct the disposition of one-half of the surplus of the 1 per cent. tax, dedicated by Act 110 of 1890, to the public schools. The Court held that this could not be done by ordinary legislation, the dedication of the one-half of the surplus of the 1 per cent. tax being by constitutional direction. Applying the principle thus announced, the result is that the Drainage Commission, as presently organized, with no other authority for its right to one-half the surplus of the 1 per cent. tax than the Act of 1896, is without interest in this controversy, and through its vicarious intervention it cannot be heard to raise the question of the constitutionality of an article of the Constitution of Louisiana, charged to be in conflict with the Constitution of the United States, and therefore cannot be heard in the prosecution of its writ of error, the Commission being without interest.

The contention that the decision of the Supreme Court of Louisiana in the case of the State vs. Flower, 49 La. An., affirms the constitutionality of the legislation creating the Drainage Commission, is without warrant either upon the consideration of the issues presented to the Court, or the decision rendered in the case. The only question submitted in that case was as to the corporate existence of the Drainage Commission, and the Court recognized its cor-

porate existence as a State functionary and not a part of the municipal government of New Orleans. The Act names the officers who are to constitute the Board, and this independent of the will of the citizens of New Orleans and the taxpayers thereof. The only justification for the recognition of the corporate existence of the Drainage Commission, under the Constitution of 1879, according to the citizens of New Orleans the selection of their own officers, was that the Commission was a State organization with duties and powers extending beyond the corporate limits of the City. No other question was discussed in that case, and that was all the Court decided. This emphasizes our contention that it is not competent for the Legislature to withdraw from the administration of the City Council, under Act 110 of 1890, Sec. 10, the right to disburse the taxes collected, and invest a State organization with their appropriation and disbursement.

It will not do to say that the constitutional direction is carried out in dedicating the surplus to works of public improvement through the intervention of an agent designated by the Legislature. The Constitution invests the power in the City Council to primarily designate to what works of public improvement this surplus shall be applied. They are not limited in the selection of the works, except that they are to be works of permanent public improvement; and this delegation of power by the Constitution to the Council is based upon the theory of its representative character, and is in harmony with that provision of the Constitution of 1879, which guarantees to the citizens of New Orleans the right of appointing its several public officers necessary for the administration of the City's affairs.

It was not competent for the Legislature of Louisiana to withdraw from the representative of the taxpayers of the City of New Orleans, the Common Council, the power invested by constitutional mandate, of dedicating the surplus fund to works of public improvement which in its opinion would best subserve the public interest, and investing it in a creature of the Legislature, independent of the representative of the citizens and taxpayers of the municipality.

II.

But if the legislation of 1896, creating the Drainage Commission, is valid, and if it should be held that its effect is to control the constitutional direction, and if the Drainage Commission, under the legislation, has a right to the surplus of the 1 per cent. tax for works of drainage, to the exclusion of all other works of public improvement, then we submit that the Drainage Commission is without interest in this controversy, because it was only to receive one-half of the surplus derived from the law, after the payment of fixed charges. And what constitutes the surplus is defined by the act itself. Section 8 provides that out of the proceeds of the 1 per cent. tax the Board shall annually provide, first, for the carrying out of the Premium Bond scheme; second, the payment of the interest upon the bonds hereby *authorized* to be issued (under Sec. 1 of the act, not only the authorization, but the direction, is to issue bonds to the amount of ten millions of dollars); third, the interest upon all other outstanding interest-bearing bonds; fourth, after the year 1925, for the annual sinking fund necessary to recall and retire the bonds issued under this act; fifth, the deduction from the tax of the expenses in-

curred by the Board; sixth, the paying of any deficiency in the interest fund for any previous years. After all of these items have been provided for out of the 1 per cent. tax, the act provides that one-half of the surplus of said tax should be passed to the credit of a special fund known as the "Permanent Public Improvement Fund," to be disposed of as provided for in said act. See Sec. 8, Act 110 of 1890. It was contemplated that the entire ten millons of bonds should be issued, and whether issued at one time or at different times, is immaterial, because the interest upon the *authorized* issue is first to be deducted, with the other charges to which the fund is subjected, before there could be any surplus. Therefore, as long as the fund is not subjected to any other charges than those expressly provided for by the act, the Drainage Commission is without interest to complain. Works of public improvement were not to receive one-half of the 1 per cent. tax, after simply providing for interest upon the bonds actually issued. The fund realized from the collection of the tax was to be charged with interest upon the bonds *authorized* to be issued, and the amount of that authorization, by direction of the statute, was ten millions of dollars. The fund was burdened with additional charges, and the surplus contemplated and the surplus provided for, was after all the charges on the fund had been discharged, and the balance was to be divided equally between the City of New Orleans for works of public improvement and the Public Schools. Therefore, until there is an attempt made *to disturb the surplus thus created*, either by a misapplication of the funds collected, or by subjecting the tax to additional burdens and charges not provided for in the Act, the intervenor is

without interest to contest the right of the people of the State of Louisiana to issue bonds for the payment of its just debts, within the limits of the ten millions authorized by the Constitutional Amendment of 1892.

The contractor with the Drainage Commission is not here complaining. The holders of the drainage bonds are not here complaining or asserting any rights upon the fund or against the sale of bonds necessary to retire and pay the debts which, by constitutional direction, were assumed by the City of New Orleans. It is the Drainage Commission, a State functionary, championing the rights of parties who do not see fit or proper to assert their own rights, or assert that they are injured in consequence of the constitutional direction.

The Drainage Commission, *qua* Commission, has no right to question or oppose the will of the sovereign; and it is without authority to champion the rights of the bondholder or contractor. It was competent for the people of this State, in convention, by constitutional direction to have diverted to any other purpose the surplus of the 1 per cent. tax; this, of course, without prejudice to the rights of the bondholders or contractors. Assume that there were no contracts extant, and no bonds issued by the Drainage Commission, could the right of the people of this State be successfully questioned as to the disposition to be made of the surplus tax? Suppose the people of this State had laid a prohibition upon works of public improvement, and had directed the public schools to be closed, and that education should not be at the public expense; could any one dispute the proposition that the surplus of the 1 per cent. tax could be ap-

propriated to other purposes than works of public improvement or public education? Would the Drainage Commission, as thus organized, have the right to attack as unconstitutional a change in the destination of the surplus of the 1 per cent. tax, and would the Court, under such an attack, continue to build up and augment a fund extracted from the pockets of the taxpayers, without any resulting benefit to them?

We submit that in either aspect the Drainage Commission is without interest to complain of the action of the people of this State, speaking through their representatives in convention assembled, in directing the City of New Orleans to discharge a debt for which it was morally if not legally responsible, and to provide for its payment out of the bonds unissued, but within the limit of the act authorizing their issue, and which in no manner disturbs, affects, or impairs the rights of bondholders or those asserting claims against the surplus arising from the 1 per cent. tax under the Act of 1890, and the Constitutional Amendment of 1892.

III.

But, independent of the two propositions we have argued, and either of which, we respectfully submit, is decisive of the pretensions of the Drainage Commission, it suffices to say that its contention received at the hands of the Supreme Court of Louisiana the full measure of recognition which it claimed. And in the course of the opinion delivered by the Chief Justice, he said:

"The consolidated bonds which relators seek to have issued upon their prayer, will really be drawn against (when issued) any surplus which will remain of the 1 per

cent. tax after the payment of all bonds issued and to be issued by the Board of Liquidation under Act 110 of 1890 and the constitutional amendment of 1892, in order to fund and retire and pay the bonds and debts therein specially enumerated; and also the bonds issued and to be issued by the Drainage Commission under the provisions and authority of Act 114 of 1896, to pay the contracts existing at the date of the adoption of the Constitution, which were entered into upon the faith of the surplus directed to be set aside to the credit of the permanent public improvement fund, by Act 110 of 1890, Act 114 of 1896, and the constitutional amendment of 1892. The effect of this will be to subordinate the rights of the holders of bonds issued by the Drainage Commission to pay for contracts entered into after the adoption of the Constitution of 1898, to those of the holders of consolidated bonds to be issued under the orders of Article 317 of the Constitution of 1898. This may check and impede the work of public improvement, but it is a matter which we cannot control."

If there were any bonds extant at the time of the adoption of the Constitution of 1898, or if the Drainage Commission was under obligations resulting from contracts made prior to that time, its bonds and obligations are protected by the decree in this cause, being superior in rank and freed from any impairment in consequence of the issue of additional bonds under the Act 110 of 1890, to discharge the indebtedness provided for in Articles 315, 316, and 317 of the Constitution. That being true, the full measure of protection under the laws and Constitution of the United States, asserted by the Commission, is recognized, and its rights, whatever they may be, as they existed on May 12th, 1898, are undisturbed and unimpaired; and therefore there is no error upon the record of which it can complain and seek to review at the hands of this Court.

ON MOTION TO AFFIRM.

Accompanying the motion to dismiss is one to affirm the judgment on the ground that the decision of the Supreme Court of Louisiana recognized and enforced the rights asserted by plaintiffs in error, and accorded to them the full measure of protection guaranteed by the Constitution and laws of the United States. Independent of the question of the right of the Board of Liquidation to assert the unconstitutionality of Art. 317 of the Constitution of Louisiana of 1898, and independent of the right of the Drainage Commission, who, without interest, has brought here, under its writ, for review, the judgment of the Supreme Court of the State, we respectfully submit that the legislation with reference to the disposition of the undisposed of bonds to discharge the obligation fixed upon the City of New Orleans, by virtue of Articles 315, 316 and 317 of the Constitution of 1898, is valid legislation, free from the charge that it affects or impairs, in any manner, or in the slightest degree, the obligation of the contracts evidenced by the bonds of the City of New Orleans issued under Act 110 of 1890, and the Constitutional Amendment of 1892. That the Supreme Court of the State went to the greatest possible length in subordinating the bonds directed to be sold by the Board of Liquidation to discharge the indebtedness that the City of New Orleans had assumed under the provisions of Article 315, and accorded the then outstanding bonds a higher rank and a greater decree of security than they were entitled to under the law authorizing their issue, and the Constitutional Amendment in confirmation thereof. This was all that the Board of Liquidation or the Drainage Commission asked, and more than they were legitimately

entitled to; and being accorded the full measure of protection which they sought, the judgment, acquiesced in by relators, should be affirmed. For the convenience of the Court, we have printed in full, and annexed to the brief, Act 110 of 1890, and the Constitutional Amendment of 1892.

Section 1 of Act No. 110 of 1890 is as follows:

"That in order to provide for the retirement of the outstanding bond indebtedness of the City of New Orleans, and such other indebtedness as under existing laws is or becomes entitled to be funded into any series of bonds, always saving and excepting, however, the bonds known as Premium Bonds, the City of New Orleans is authorized, empowered and directed to issue bonds to the amount of ten millions of dollars; ..... to be known as the 'Constitutional Bonds of the City of New Orleans.'

"Said bonds shall be numbered ..... and shall be signed by the Mayor and Comptroller of the City of New Orleans, and delivered to the Board of Liquidation of the city debt, to be used for the purposes aforesaid in accordance with the provisions of this Act."

Under the the terms of said section, Constitutional Bonds to the full amount of ten millions of dollars were delivered by the Mayor and Comptroller to the Board of Liquidation.

At the time that the late Constitutional Convention assembled, the Board had sold, or otherwise disposed of, not quite nine million of dollars of said bonds. There remained unsold, undisposed of, more than one million dollars of said bonds. It is admitted that there is, to-day, something over a million of dollars of said bonds in the hands of the Board of Liquidation.

The Convention could see no good reason why the mil-

lion which has remained unemployed should not be used by the City for the payment of other legitimate obligations.

The claims of the School Teachers and Portresses of the Public Schools of this City for their unpaid salaries for the years 1882, 1883, 1884, 1885, 1886 and 1887, had never been satisfied. Upon every consideration of justice, those debts, technically due by the Board of School Directors for the Parish of Orleans, were morally due by the City of New Orleans; for the failure of the Board of School Directors to discharge its obligations under the law and to pay the full salaries of the Teachers and Portresses for the years stated, was attributable solely to the lack of the necessary funds, and *the City* was responsible for the *insufficiency of the appropriations* needed to carry on *its schools*.

The Convention therefore authorized the City of New Orleans to examine into said claims, and to assume the payment thereof, if it should find them to be equitably due. And it was ordained that if the City Council should approve said claims, and issue the City's certificates of indebtedness therefor, the Board of Liquidation should pay them. And in order to provide the requisite funds the board was authorized and commanded to sell a sufficient number of the Constitutional Bonds still in the Board's hands; or, in other words, to pay out of the million dollars' worth of bonds which has remained unemployed.

But the Board of Liquidation asserts under Section 1 of Act No. 110 of 1890, that the Constitutional Bonds can be used only for the purpose of retiring the bonded debt which was outstanding, and such other indebtedness as was entitled to be funded, at the time that the Constitutional Bonds were issued.

That is the question raised by the Board, without authority or interest, as it appears to us.

In what manner the obligation of any contract will be impaired by the use of the City's money to pay a certain debt rather than some other debt, is not very obvious.

No one will deny that, originally, Act No. 110 of 1890 might have validly provided for the payment of other debts than those specially mentioned in said act. Historically, it is a fact that it was expected that the entire issue of $10,000,000 would be absorbed by the particular debts specified in the act. Now, however, that the act has been in operation six years, it is found that it did not require more than nine millions of dollars to fund those particular debts. How can it work any injury to the holders of Constitutional Bonds, how can it affect them at all; nay, how can it concern or interest them, that the remaining million which was originally intended and expected to be used for the payment of certain debts of the City of New Orleans should be employed, under the same constitutional sanction, to pay other legitimate obligations of the City?

It is perfectly evident that every holder of Constitutional Bonds became a holder in a $10,000,000 issue. This was *the contract:* That there should be not more than $10,000,000 of bonds issued; that the bonds should be payable fifty years after their date, or sooner; that they should bear interest at the rate of 4 per cent. per annum, payable semi-annually; that they should be exempt from taxation; that the security for the payment of the interest and principal of said bonds would be the special *ad valorem* tax of 1 per cent. to be levied annually, during the existence of the

bonds, upon all the taxable property, real, personal and mixed, in the City of New Orleans.

Those were the *material* terms of the act, which could not have been modified. The act provides:

"All of the *substantial* provisions of this act are hereby declared to be a contract between the State of Louisiana, the City of New Orleans, the Taxpayers of said City and each and every holder of said Constitutional Bonds." (Section 16).

Is it material, is it of any consequence at all, that the proceeds of the bonds should be employed in paying certain debts of the City, instead of other debts?

This Court has dealt with an exactly similar question, in the case of the Board of Liquidation et al. vs. McComb, reported in 92 U. S., page 531.

That case is thus stated by the Court itself, at pages 532 to 535:

"It appears that, by an act of the Legislature of Louisiana, passed the 24th of January, 1874, called the Funding Act, the Governor of the State, and other State officers, were created a Board of Liquidation, with power to issue bonds of the State to an amount not to exceed $15,000,000, or so much thereof as might be necessary for the purpose of consolidating and reducing the floating and bonded debt of the State, and to be called 'consolidated bonds of the State of Louisiana;' which bonds were to bear date the 1st of January, 1874, and to be payable in the year 1914, with interest at seven per cent. per annum. The act provided that these bonds should be exchanged by the board for valid outstanding bonds of the State and valid warrants of the auditor issued prior to the passage of the act (except warrants issued in payment of constitutional officers of the State), at the rate of sixty cents in consolidated bonds for one dollar in outstanding bonds and warrants; AND

THAT THEY SHOULD BE USED FOR NO OTHER PURPOSE. An annual tax of five and a half mills on the dollar of the assessed value of all the property of the State was levied, and directed to be collected, to pay the interest on these bonds, and to purchase and retire them. Other provisions were added, making it penal for the officers to divert the funds thus provided, or to obstruct the execution of the act, or to fail in the performance of any of the official duties required by it; and it was declared that no court or judge should have power to enjoin the payment of the bonds or the collection of the tax provided therefor. The eleventh section further declared, that each provision of the act should be a contract between the State and each and every holder of the bonds issued under the act; and section thirteen provided that the entire State debt, prior to the year 1914, should never be increased beyond the sum of $15,000,000, authorized by the act; it being declared to be the intent and object thereof, and of the exchanges to be effected under it, to reduce and restrict the whole indebtedness of the State to a sum not exceeding $15,000,000, and to agree with the holders of the consolidated bonds that said indebtedness should not be increased beyond that sum during said period. On the day of passing this act, the general assembly passed another act, proposing to the people of the State an amendment to the Constitution of the State, which was adopted at the ensuing election; and provided that the issue of the consolidated bonds authorized by the funding act should create a valid contract between the State and each holder thereof, which the State should not impair; prohibited the issue of any injunction against the payment of the bonds or levy of the tax; directed that the latter should be levied and collected without further legislation; and declared that whenever the debt of the State should be reduced below $25,000,000, the constitutional limit should remain at the lowest point reached, until it was reduced to $15,000,000, beyond which it should not be increased.

"The language of this clause is explained by the fact

that, in 1870, a constitutional provision had been adopted limiting the State debt to $25,000,000; and the further fact, stated in the bill, that in 1874, when the funding act was passed, the outstanding bonds and valid warrants fundable under the act equalled this amount; so that, at sixty cents on the dollar, the debt to be funded would require the issue of the whole $15,000,000 of consolidated bonds. Besides these classes of debts, others to a considerable amount were then outstanding, as will appear further on.

"The board of liquidation created by the funding act entered upon the performance of their duties, and, up to the commencement of proceedings in this case, they had issued a little over $2,000,000 under the act.

"On the 2d of March, 1875, the general assembly passed an act authorizing the board to issue a portion of the above mentioned consolidated bonds to the Louisiana Levee Company, in liquidation of a debt claimed to be due it under a contract made with the State in 1871, by which that Company was to reconstruct and keep in repair the levees on the Mississippi River and its branches and outlets. The Act of 1871, in and by which this contract was made, had provided and set apart certain taxes to be levied and collected throughout the State, to meet the payments which would accrue to the Company. But it seems that these taxes had failed to reach their destination, as a committee, appointed by the Act of 1875 to investigate the subject, reported that there was $1,700,000 still due the Company, which had accrued prior to October, 1873, and which the act authorized the board of liquidation to pay in the said consolidated bonds. *This debt was not one of the debts to fund which the consolidated bonds had been created.* It was not represented by outstanding bonds of the State, nor by valid warrants of the State auditor; *and the complainant in this case, in his bill, insists that it is not a debt of the State at all, being provided for by the special taxes appropriated for its payment. Another objection made to the proposal to fund it is, that it is to be paid in full, whilst the funding act authorized the payment of only sixty cents on the dollar of the debts to be*

replaced by the issue of the consolidated bonds,—the great object of the act being to effect a reduction of the State debt within manageable limits. *It is insisted that the Act of 1875, authorizing the appropriation of consolidated bonds to the payment of the levee debt, defeats this scheme, and impairs the validity of the contract made with those who have accepted the bonds according to the terms of the funding act, and is, therefore, void.* The plaintiff, being a holder of these bonds, filed his bill for an injunction to prevent the consummation of the wrong which he alleges will be committed by carrying out the Act of 1875."

The Supreme Court, after passing upon another point, said (at page 537):

"The question, however, remains, whether, even supposing the levee debt to be a valid one, it can be lawfully funded in the consolidated bonds, in view of the other stipulations of the funding act.

"The principal stipulations of this act, aside from that respecting the increase of the State debt, are: *First*, that the consolidated bonds shall not exceed in amount $15,000,000, or so much thereof as may be necessary,—that is, necessary for the purpose of consolidating and reducing the floating and bonded debt of the State at sixty cents on the dollar; *secondly*, that they shall only be used for exchange for said floating and bonded debt, as designated in the act, *which does not embrace the levee debt in question;* and that such exchange shall be at the rate of sixty cents in consolidated bonds for one dollar in outstanding bonds and warrants; *thirdly*, that a tax of five and a half mills on the dollar of the assessed value of all the real and personal property of the State shall be annually levied and collected for paying the interest and principal of the bonds, and is set apart and appropriated for that purpose, and no other, *any surplus beyond paying interest to be used for the purchase and retirement of the bonds; fourthly*, that the power of the judiciary, by means of *mandamus*, injunction and criminal procedure, shall be exerted to carry out the provisions of the act.

"The precise manner in which these stipulations will be violated by the proposed funding of $1,700,000 of the levee debt at par, as insisted by the plaintiff, is this: *First*, that the entire issue of the bonds will be increased by that amount, thereby diminishing the relative security provided for each bond. *Secondly*, that the levee company will receive full amount of its debt, whilst the complainant, and others in like case with him, have accepted sixty cents on the dollar for their old bonds, on the faith that no one should receive any more. *Thirdly*, that the benefits of the scheme propounded by the funding act will be lost by such a violation of it, and all the advantages anticipated by the complainant and others in surrendering their original debts will fail.

"In answer to the first of these supposed violations,—namely, that the issue of consolidated bonds will be increased by the amount of the levee debt,—it may be said, that the amount of the consolidated bonds is expressly limited to $15,000,000; *and there is no pretense that the board of liquidation intend to issue more.* The proposed appropriation might have the effect of excluding from the benefit of the funding act some of the outstanding obligations of the State originally intended to be embraced within its provisions. But it will not increase the total amount of the consolidated bonds. The complainant can hardly contend that he has a right to prevent the State from using the bonds for funding its other debts, if those for which they were intended should not be surrendered. It is a question of power. The funding act gives the board of liquidation power to issue $15,000,000 of these bonds, or so much thereof as may be necessary to fund the outstanding floating and bonded debt; and it is admitted that the amount of that debt is sufficient to absorb the whole $15,000,000. He cannot say, 'I am entitled to the chances of some of the designated creditors not coming in.' He cannot be injured, so far as this objection goes, if the amount of bonds ultimately issued does not exceed the limit of $15,000,000. It may very well

be that some of the creditors whose debts were intended to be funded will refuse to come in and accept the terms of the funding act. If that should be so, it might greatly embarrass the financial affairs of the State to have to appropriate the entire tax of five and a half mills to a mere fraction of the debt it was intended to provide for, which was $15,000,000. To tie the hands of the State under such circumstances would be to give the complainant the advantage of a technicality, to the great injury of the State. It would be adhering to form rather than to substance. The complainant consented, when he took his bonds, that there might be $15,000,000 of them issued. He cannot justly complain if that amount is not exceeded, even though the debts funded thereby are not precisely those specified in the act, provided the material terms of the act are complied with. In any case, those that are not funded must be provided for in some other way; and, unless some special reason exists why one debt should be funded instead of another, the complainant cannot be injured. He has failed to show any such reason in his bill."

In the case cited, the complainant's bill was maintained, but solely because it was proposed to pay the Levee Company's claim *in full*, while the Funding Act authorized the payment of *only sixty cents on the dollar* of the debts to be funded in consolidated bonds.

But upon the question which we have for discussion, the case cited is directly in point and decisive.

There is nothing by way of argument to be added to the intrinsic strength of the reasoning of the Court in the case cited, and its perfect parallelism in all of its features, with some additional strength because of the reservation of the surplus for the retirement of the bonds under the Funding Act, ought to be decisive of this controversy.

This was a case where the State Board of Liquidation was willing to obey the mandate of the Legislature, but a

bondholder had enjoined the Board upon the ground that his contract was about to be impaired. Here, it is the Board of Liquidation of the City Debt which, of its own motion, refuses to comply with the Constitution! Not a single bondholder is in Court to complain that his contract would be impaired; nor does a single bondholder believe that the sale of some of the bonds still in the hands of the Board of Liquidation can in any manner affect his rights.

Under the Funding Act of 1874, every bondholder had an interest in the creation and conservation of a surplus with which ultimately to retire the debt, and the funding of an indebtedness not contemplated or provided for by the act was sufficient to give rise to complaint; and at *first blush* would justify an attack upon the Board for attempting to fund debts other than those provided for in the act, and to that extent diminish the extent to which the bondholder had the right to look for the ultimate payment of his indebtedness; and, as Mr. Justice Bradley said, so long as the amount funded did not exceed the limit, and so long as the tax dedicated by the act to the payment of the debt was not diverted, there could be no impairment of the obligation, because every person that dealt with that issue dealt with it knowing that it was to be an issue of fifteen millions of dollars, and they took their bonds subject to that condition. And so here. The issue was to be ten millions of dollars, to be applied to the retirement of the bonded and floating indebtedness of the City. The taxes levied annually for the payment of the interest and eventually for the retirement of the principal, was safe-guarded, and as long as the limit was not exceeded or the tax diverted, those who dealt with the City and accepted the

bonds of that issue, did it knowingly, and it is immaterial to them to what purpose the excess of the issue was applied, provided the limit was not exceeded.

The Drainage Commission of New Orleans intervened and joined the Board of Liquidation in opposing the relators' demand.

Let us see what is the basis of the Drainage Commission's intervention, and whether it has any interest herein.

Sections 7 and 8 of Act No. 110 of 1890 provide that for the payment of the interest and principal of the Constitutional Bonds, and all other outstanding valid bonds of the City, there shall be levied annually a special *ad valorem* tax of one per cent. upon all the taxable property, real, personal and mixed, in the City of New Orleans—which tax, as soon as collected, shall be paid over to the Board of Liquidation; that out of the proceeds of said tax, beginning with the year 1892, the said Board shall annually provide for the carrying on of the Premium Bond plan, the payment of the interest upon the Constitutional Bonds, and upon all other outstanding interest-bearing bonds of the City, and (after the year 1925) the sinking fund provided for in Section 9 of the act. After making said provisions, and after deducting the expenses incurred by the Board, and after paying any deficiency in the interest fund of any previous years, one-half of the surplus is to be passed to the credit of a special fund, to be known as the "Permanent Public Improvement Fund;" the other half of said surplus is to be paid over to the School Board of the City of New Orleans.

The Drainage Commission of New Orleans was created by Act No. 114 of 1896. Section 3 of that act is as follows:

"That that portion of the funds in the hands of the Board of Liquidation under the provisions of Sections 8 and 10 of Act No. 110 of the General Assembly of Louisiana of 1890, accruing to public works, etc., from January 1, 1898, is hereby dedicated and applied to the purposes of this act; and all monies and funds now under the control of the City of New Orleans, and hereafter to be received, arising from the sale of street railroad franchises or other franchises, are also hereby dedicated and applied for the purposes of this act."

By section 6 of the same act, the Drainage Commission was empowered to issue bonds to an amount not exceeding five millions of dollars.

Act No. 114 of 1896 was amended by Act No. 63 of 1898. The Commission was authorized to issue bonds only to an amount not exceeding one million five hundred thousand dollars (instead of five millions).

The contention of the Drainage Commission is that it has a vested right in the one-half of the surplus of the one per cent. tax, which formerly accrued to works of permanent public improvement.

That may be true, if the *Legislature* had the power to alter the terms of a *Constitutional Amendment* (that of 1892, the Act 110 of 1890)—a proposition which we have already discussed.

But, however this may be, it is manifest that the yearly *surplus* contemplated by Act No. 110 of 1890 is the amount which may remain on hand after attending to all the matters mentioned in the act, and providing for a $10,000,000 issue of Constitutional Bonds. The act itself uses these terms: "the principal and interest of

the Constitutional Bonds herein authorized to be issued;" (Section 7); "the interest upon *the bonds herein authorized to be issued.*" (Section 8). The sinking fund beginning in 1925, provided for by Section 9, is calculated on the basis of a $10,000,000 issue. The amount of the special tax collected from year to year (one per cent. on all the taxable property in the City of New Orleans) shows that a $10,000,000 issue was to be looked after; for even with a full issue, and even at the present low assessment of taxable property in this City, said special tax would yield a large *surplus*—about half a million a year. It is apparent from every section of the Act of 1890 that the bond issue which is contemplated and which is provided for by said acts is an issue of $10,000,000 and not one of $9,000,000.

The Drainage Commission, therefore, has no interest herein. So long as the limit of the issue is not exceeded, it is, like the holders of the Constitutional Bonds, without right to complain.

That very question of a *surplus* was also one of the features of the Funding Act in the case which we have cited, 92 U. S. 531. The act under consideration in that case (Act of January 24th, 1874), stipulated that the surplus, after paying the interest on the bonds, should be used for the purchase and retirement of the bonds; in other words, that it should go to the bondholders themselves. The Supreme Court of the United States did not hesitate to declare that the bondholders had no cause to complain, because debts other than those specially mentioned in the Act were about to be funded.

And this, after all, is the only question in this case.

After authorizing the issue of $10,000,000 of bonds, for the purpose of funding certain obligations, has the State the power and the right to authorize the use of said bonds for the funding of other valid debts? We believe it is quite clear that the right exists, and that its exercise does not, and in the nature of things cannot, impair the obligation of contracts.

We might perhaps close this brief here; but the Board of Liquidation and the Drainage Commission have presented such an array of figures, and in a manner so calculated to obscure the issue and confuse the Court, that we deem it well to say a few words in this connection.

The Board of Liquidation calls the Court's atttention to the fact that, before the creation of the Drainage Commission, contracts had been made and debts incurred, which were to be paid out of the one-half of the surplus of the 1 per cent. tax, accruing to the Permanent Public Improvement Fund.

That said debts must be paid is undeniable. That they will be paid is certain. Under the legislation relied on by the Drainage Commission, it was to receive that portion of the surplus which the Permanent Public Improvement Fund got formerly, *from and after January 1st, 1898*. But, as explained by Mr. Walmsley, in his testimony, it was agreed between the Board of Liquidation and the Drainage Commission that the outstanding contracts and unpaid debts of the Permanent Public Improvement Fund should first be met and satisfied, and the Drainage Commission consented to draw out its one-half of the surplus of the one per cent.

tax *from and after January 1st, 1899*. So that those debts have been amply secured.

Now, let us look at the figures of the Drainage Commission, as presented in its intervention and in the evidence.

The Drainage Commission has negotiated five hundred thousand dollars of the total one million and a half of bonds which it is authorized to issue, and it has made large contracts for the great work which it is now executing in the City of New Orleans.

It would be supposed, from the pleadings and the piteous appeals of the Drainage Commission, that, if $115,558.33 should be paid to the School Teachers out of the million of Constitutional Bonds unsold, the Drainage Commission will not be able to meet its contracts, the Drainage Bonds will become worthless, and drainage of the City must be abandoned.

But, what are the facts?

The sources of revenue of the Drainage Commission are: all monies or funds arising from the sale of street railroad franchises, or other franchises, and one-half of the surplus of the one per cent. tax under Act No. 110 of 1890.

From the first source, the sale of railroad and other franchises, it is in evidence that the Drainage Commission has already received five hundred and eighty thousand dollars; and it will certainly receive, in the course of years, considerable money from the same source.

From the other source, it will be getting, from and after the 1st day of January, 1899, and until January, 1943, more than two hundred thousand dollars each year.

Mr. Walmsley testified that, at the present time, the surplus under Act 110 of 1890 is between four hundred

thousand and four hundred and fifty thousand dollars per annum. If the entire issue (not $115,558.33 only, but *the entire issue*) of Consolidated Bonds were sold, the surplus would still be over four hundred thousand dollars a year. And this amount would not decrease, but *increase*, from year to year, in proportion to the increase in value of the taxable property in the City of New Orleans upon which the special 1 per cent. tax is levied.

So that there are surely nine millions of dollars in sight for the Drainage Commission, from this source; and the amount will, in all probability, be considerably more.

As the last considerations addressed to the Court cannot be considered, either on the motion to dismiss or to affirm, without trenching upon the merits of the controversy, they were only introduced in order to meet the "piteous appeal" of the Drainage Commission, who will strive to create the impression here, as it did in the lower court, that its rights are imperilled and its obligations impaired, because the State of Louisiana directed the City of New Orleans to pay a just and meritorious debt out of the unissued bonds, the interest upon which, and the retirement of the principal in the end, comes from the pocket of the taxpayer. In conclusion, we respectfully submit:

First. If the decision of the Supreme Court of Louisiana is to be considered as part of the record, then all the claims advanced, both by the Board of Liquidation and the Drainage Commission, are safe-guarded and protected from impairment.

Second. If, however, the decree alone is to be looked to, then we submit that the legislation, appropriating a part

of the unissued series of bonds, does not impair the obligation of the contract.

These considerations, independent of the right of the Board of Liquidation to be heard attacking the constitutionality of State legislation, and of the want of interest in the Drainage Commission, whose rights are in no manner affected, should insure, at the hands of this Court, a dismissal, and the affirmance of the judgment of the Supreme Court of Louisiana.

CHAS. J. THÉARD,
ARTHUR McGUIRK,
Attorneys for Relators.

HENRY L. LAZARUS,
Of Counsel.

APPENDIX.

Petition of Relators.

To the Honorable the Civil District Court for the Parish of Orleans:

The petition of the State of Louisiana, upon the relation of Miss Lucretia B. Wilder, Mrs. Anna B. Cook, J. E. Seaman, J. V. Calhoun, J. H. Buckley, T. W. Dyer, Mrs. Mary Stamps, Miss H. A. Suter, Miss H. W. Seymour (now Mrs. Gresham), Miss Susan B. Elder, Miss Armentine Vienne, Miss M. Cusach, Miss B. Woods, Mr. A. S. Leche, Miss J. E. Linsler, Miss M. E. Pursell, Miss I. D. Pickens, Miss Kate Slack, Miss M. A. Curran, Mr. W. S. McElroy, Miss Carrie Forrer, Mrs. A. L. Howard, Miss M. G. Oliver, Miss Fannie A. Stringer, Miss Ida Whitaker, Miss Fannie S. Harby, Miss Louise Bertel, Mr. Vincent Mielly, Miss M. A. Nugent, Miss K. E. Eastman, Miss S. Bloomfield, Miss O. Woodworth, Mrs. Esther Dobie, Mrs. E. C. Hunter, Miss E. C. Dowty, Mr. D. A. Blanchard, Mrs. C. A. Curtis, Miss M. E. McLoughlin, Miss H. L. Mylotte, Miss M. A. Broderick, Miss M. G. Fischer, Miss B. Furneaux, Miss Ada Jenks, Miss M. H. O'Connor, Miss A. M. Dart, H. B. Folk, Miss Isabella Simmons, Miss Charlotte Stuart, Miss Nellie H. Watson, Miss Sallie Harris, Miss G. I. Lambourne, Miss Jennie Reese, Miss M. L. Martin, Miss J. C. Dodge, Miss Isabel Levy, Mrs. M. E. McDonald, Mrs. J. C. Robinson, Miss Eliza Todd, Mrs. M. E. Taliafero, Miss Ida Patton, Miss M. A. Ames, Miss F. L. Flemmich, Miss Clemence Charles, Miss Olivia Pitard, Miss M. A. Larkin, Mrs. R. Sulakoski, Miss M. Nevin, Mr. J. H. Heslin, Mrs. Annie

Macken, Miss I. B. Grant, Miss E. L. Venables, Miss K. M. Hamblett, Miss Maria Mulvey, Miss A. J. Hamilton, Miss A. Conwell, Miss Annie Sinclair, Miss A. S. Miller, Miss Julia Donovan, Miss M. M. Hewitt, Miss T. A. Sisa, Miss Emma B. Lloyd, Mrs. C. B. Sproule, Miss A. Paddon, Miss R. M. Woodley, Mrs. K. C. McCann, Miss M. McCord, Miss Cecilia Coll, Miss Carrie Labatt, Miss Julia Mulvey, Miss Lizzie Barry, Miss Julia Buckley, Miss B. E. Sullivan, Miss Ida Bennett, Miss Mary Walsh, Miss Anna Stokes, Miss Theresa Hartnett, Miss Laura J. Murphy, Mr. A. P. Williams, Miss R. E. Campanel, Miss Amelia Berhel, Miss B. Plicque, Miss Alice Jones, Mrs. C. H. Thezan, Mrs. Sarah B. Allen, Mrs. S. F. Williams, Mrs. C. M. Keppard, Mrs. E. P. McCarthy, Miss C. C. Kennedy, Miss L. M. White, Mrs. Rosa T. Edmunds, Miss E. B. Egleston, Miss R. M. Chevaillie, Mrs. K. J. Ricker, Mrs. A. E. Jones. Miss Addie McCord, Mrs. O. B. Cassanova, Mrs. H. M. Braguiens, Miss Emma Torrey, Miss Georgie Kerns, Miss L. Neelis, Miss M. J. O'Neil, Miss Julia Conroy, Mrs. J. E. Stehle, Miss M. Sassinot, Mrs. E. M. Keplinger, Miss K. Divine, Miss Adele Coudrain, Miss M. H. Hill, Miss O. K. Chellet, Miss R. King, Mr. Henry Reggio, Miss C. E. Carolan, Miss S. A. Grant, Miss Josephine Stewart, Mrs. M. L. Hampson, Miss Josephine Hille, Miss H. A. Pittman, Miss Rosa Carolan, Mrs. Palmyre Cartier, Miss Aline Ribet, Miss Alice Sherlock, Miss M. E. Lyons, Miss Gretta Donovan, Miss Annie Kerwin, Miss Mary Pearson, Miss M. A. Armstrong, Miss J. M. Mettaxa, Miss M. V. Serran, Miss A. E. King, Miss Emma Lacroix, Miss Alice Sheean, Miss Frances O'Connor, Mr. Warren Easton, Miss G. McCerran, Miss M. J. Paul, Mrs. Mary Moore, Miss S. V. Redwood, Miss A.

M. Hero, Miss C. Nicol, Miss E. V. Relf, Miss Louise Faust, Miss Sallie Boyce, Miss F. L. Smith, Miss V. Russell, Miss Ellen Moran, Miss C. Lichtenstein, Miss A. Finch, Miss E. J. Young, Mrs. D. R. Miller, Miss Helen McCarthy, Miss Mary McCann, Miss M. A. Ferguson, Miss Marie L. Points, Miss Lizzie Donovan, Miss Julia Hedges, Mrs. M. F. Gerrard, Miss K. Howley, Dr. Jas. Burns, Miss Antonis Hart, Miss Ella M. Brown, Miss Jane McAnulty, Miss Marie Peres, Miss Hanora Brown, Miss A. F. Duval, Miss Mary L. Barrett, Mr. W. J. Gahan, Mrs. V. Ducatel, Miss Emily Wagner, Miss Kate Toole, Miss Leonie Chevallo, Miss Ellen Carey, Miss Emma Ducoing, Miss A. M. Woods, Mr. Gustave Andry, Mrs. M. A. Doriocourt, Miss Ellen Quayle, Miss Rebecca Smith, Miss M. Bayhi, Miss Laura C. Harris, Mr. C. A. Barnes, Mrs. A. E. Van Camp, Mrs. Paul Ducatel, Miss Louise Van Dycke, Miss Eugenie Desdunes, Miss C. Hubbard, Mrs. Ann Bell, Miss M. O. Carter, Miss Rosa T. Moore, Miss Julia White, Miss Edith Harrison, Miss Susan Smith, Miss F. F. Huberwald, Mrs. H. Chaery, Miss Louise Lynch, Miss Lizzie Kennedy, Miss Mary Murphy, Mrs. Sylvia Easton, Mr. E. H. Trepagnier, Mrs. M. F. Stevens, Miss H. McCarthy, Miss M. Marshall, Miss M. A. Stewart, Miss Lorenza Bertus, Miss Mary Gordon, Miss M. E. Anderson, Miss K. Delesdernier, Miss Alice Clark, Miss Ellen Kennedy, Miss Rita C. Monrose, Miss Kate Quaid, Miss E. B. Thomas, Mr. Ulric Bettison, Miss I. Warner, Mr. T. J. O'Sullivan, Miss Ellen Gow, Miss M. S. Wilson, Mrs. A. L. Savio, Miss M. E. Cuggy, Miss Lucy Tallon, Miss Delphine Points, Miss Annie Scott, Miss K. J. Hughes, Mrs. Anna Sheean, Miss Emma Prados, Miss Sophie Blancq, Miss Julia Chevillon,

Miss Mary B. Clark, Miss Parmela Cucullu, Miss Rosa Dione, Miss Esther Brandao, Mr. A. P. Chandeler, Miss Bridget Nolan, Miss J. A. Mayberry, Miss C. L. Stewart, Miss K. L. Magnon, Miss Kate E. Murphy, Miss Rebecca Fortune, Miss Marcella Curley, Miss M. O. Reynolds, Miss Mary McElligott, Miss A. E. O'Brien, Miss Mary Moore, Miss N. E. Cooper, Miss Jane Donnelly, Mrs. J. Fitzgerald, Miss Mary L. Stokes, Mrs. H. Kilshaw, Miss J. F. Cripps, Miss M. A. Murphy, Miss E. J. O'Hara, Miss S. Llambias, Mrs. C. Collerton, Miss M. A. Riley, Miss H. L. Garrett, Mrs. A. W. Brown, Miss J. J. Ingraham, Miss M. E. Golden, Miss Amelia Kelsey, Mrs. L. Ward, Mr. M. M. Lowe, Miss M. E. Tank, Miss Ellen Clapp, Miss Maud O'Brien, Miss L. E. Lambourne, Mrs. H. M. Wells, Miss K. L. Glenn, Miss N. S. O'Connor, Miss Helena Phillips, Mrs. M. E. Mallam, Miss M. Creswell, Miss Bettie Murphy, Miss M. Emanuel, Miss M. A. Mulligan, Miss Agnes Boyce, Mrs. J. Kleinpeter, Miss Agatha Meehan, Miss Emma J. Taylor, Miss L. C. King, Mr. Louis Leche, Miss N. P. Hero, Miss Nettie Parr, Miss I. Fredricks, Miss B. A. Houghton, Miss Mary J. Dowty, Miss Margaret Horan, Miss May Lemkin, Mrs. B. L. Beck, Miss Jessie Wilbur, Miss M. A. Wickes, Miss M. Bridgins, Miss I. E. O'Brien, Miss Eliza Wheaton, Miss H. M. Jourdan, Miss Ruth H. Welsh, Miss K. C. Connelly, Miss Georgia Hodgkins, Miss E. Wilbur, Miss S. S. McEnery, Miss P. E. Packard, Miss L. E. Sterling, Miss M. E. Sommerville, Mrs. S. M. Williams, Miss Blanche Cenas, Mrs. Josephine Reed, Mrs. C. D. Cooke, Mrs. Cora P. Beecher, Miss Etna Portner, Miss Sidonia Holmes, Mr. J. R. Hutchinson, Miss M. E. Finnerty, Miss E. B. Brown, Miss Irene Rondeau, Miss Minnie Weaver, Miss C. A.

Forbes, Miss M. A. Reynolds, Miss Nellie Pickett, Miss M. A. Flannagan, Mrs. C. Reese, Miss L. C. Whitaker, Miss M. J. Dornon, Miss M. J. Kearney, Miss A. L. Beecher, Mrs. M. W. Carroll, Miss M. G. McLorenan, Miss D. L. Bostick, Miss Elese Hunter, Miss E. Allen, Miss A. E. McLirenan, Mrs. Ellen Hamilton, Miss C. A. Warner, Miss J. E. Morton, Mrs. M. E. Westerfield, Mrs. M. A. Martinez, Miss Mary Clarkson, Miss Ida Halberg, Miss E. Verlander, Mr. C. P. Guichard, Mrs. P. H. Saffole, Miss E. E. Vigers, Miss Amelia Chiapella, Miss Mary E. Penn, Miss Jennie G. Simms, Miss J. C. Berhel, Mr. J. J. O'Connor, Miss L. S. Howard, Mrs. M. E. Fortier, Miss Mathilda Ohlsen, Miss Ada V. Rousseau, Mr. S. C. Clark, Mrs. L. B. Anderson, Mrs. A. E. Chase, Miss M. A. Gardiner, Miss Maggie Redlich, Miss N. E. Nicholls, Miss E. C. Wheelehan, Mrs. M. E. Holmes, Miss E. F. Hayden, Mrs. M. J. Williams, Miss J. E. Mooney, Miss M. J. Turner, Miss Maggie Crawford, Miss H. E. Lawrence, Miss A. E. Kilgrove, Miss F. S. Delacy, Miss E. L. Rodriguez, Miss Annie Leddy, Miss M. A. Sullivan, Miss Sallie Payne, Miss Lizzie Keeling, Miss Susan Shriever, Miss Julia Clapp, Mr. T. L. Preston, Miss H. O. White, Miss L. E. Prest, Miss Fannie I. Dart, Miss E. Gardenghi, Miss Annie Dyer, Miss Emma T. Rosner, Miss Isabel Ferguson, Miss May Brooks, Miss Sarah H. Evans, Miss May E. Blood, Miss May Clack, Miss M. H. Hallaran, Miss Eliza Clark, Miss C. A. Beck, Mrs. R. Railpon, Miss Kate Kelly, Miss C. G. McManus, Miss Annie Theil, Miss A. A. Pascoe, Miss C. W. Bentley, Miss Florence Gordon, Miss Mary A. Tallieu, Mrs. G. A. Anderson, Miss Isabel Ryan, Mrs. F. V. Hooper, Miss Nanon J. Kelley, Miss Mathilda Reuter, Miss

N. B. Harthorne, Mrs. J. R. Dicks, Miss Lizzie Kelly, Miss Emily Olschner, Miss May A. Leddy, Miss R. T. Murphy, Miss Emma Quick, Anita Ball, G. Black, Matilda Bernard, M. Bull, J. Brown, O. Brennan, A. Cornwell, R. Carolan, R. C. Chamberlain, M. M. Campanel, E. M. Clark, B. Carroll, A. J. Dougherty, N. Donovan, Alica Dickson, Mary Daly, Selina Duvic, Emily Dart, M. DeBoer, D. Daignan, H. Diamond, E. B. Eagleson, Alica Ellis, Georgie Fountain, A. A. Finch, M. Flanagan, J. Gallagher, Kate Hughes, L. Hentich, Kate Howley, B. Hynes, M. Halloran, Irene Hester, Louise Hornbeck, Ida Halberg, E. Hamilton, A. Harper, C. M. Holland, N. Houlgrave, M. Harrison, M. G. Holmes, B. Harthorne, Daisy Jackson, N. James, I. E. Joyce, L. Kilshaw, A. C. Kearney, Mary Kennedy, A. Kennedy, M. D. Kennedy, J. Lahargue, M. A. Michel, L. Mulvey, A. Michel, B. Mayhen, B. Maher, M. D. Moore, M. Michel, Lizzie Neelis, N. E. Nicholls, M. Orrántia, Agatha Pretus, F. Powers, R. M. Pascoe, L. A. Pation, G. Peyton, A. Payne, M. Ryan, S. J. Stephens, S. A. Steele, M. Smith, L. Smith, C. M. Spellicy, J. Simon, M. Spellicy, S. Smith, N. Shelly, A. Stickney, C. Stringer, D. Sheehan, Kate Sullivan, Martha Spence, Rosalie Shoeffer, E. J. Taylor, Alice Young, B. Allen, C. Amman, E. Bernard, E. O. Boyle, M. Barrow, B. Booth, Sarah Brooks, B. Blanc, J. Burke, C. Byrne, D. Burt, D. Cosgrove, M. Collins, E. Cure, E. Cronan, M. Caldwell, L. Chevolleau, E. Chineau, M. Carathers, M. T. Cochran, M. Carroll, M. Connelly, M. Collier, M. Duignan, H. Daly, M. Donnelly, C. Denny, B. Doyle, E. Ducts, J. Foster, A. Gould, R. Hevyart, M. Hausman, B. Heavy, J. Jacquet, C. Killelae, J. Kinney, G. H. Kelly, M. Kelly, Mary Kelly, M. Lane, M. Lardner, C. Moffat, E. McCabe,

M. McCormack, E. McGinnis, B. McKeone, E. Nides, M. Morton, H. O'Connor, M. A. Pickett, E. Rhobacher, M. Riley, N. J. Raynal, John Ryan, M. Ryan, M. Schreiver, M. J. Stansbury, M. Shea, M. White, J. C. Watkins, A. Wilcox, A. Waters, with respect shows:

That in accordance with the provisions of Articles 315 and 316 of the Constitution of the State of Louisiana of 1898, the City of New Orleans has examined into and assumed payment of the claims of the School Teachers and Portresses of the Public Schools of this City for unpaid salaries for the years 1882, 1883 and 1884; and the City Comptroller, by direction of the City Council, has issued to relators, as the original owners of said claims, Certificates of Indebtedness, countersigned by the Mayor, setting forth the amount due by the City to each claimant, and representing the total sum of one hundred and fifteen thousand five hundred and fifty-eight 33-100 dollars ($115,558.33).

As will more fully appear from the said certificates, which will be produced on the trial of this cause, and from the Ordinances adopted by the City Council, Nos. 14,477, 14,591 and 14,675, C. S., copies of which will be filed hereafter.

That a list of all the claimants, and of the amount due each claimant, is made part of Ordinance No. 14,591, and a duplicate of said list is annexed to and made part of this petition.

That Articles 316 and 317 of the Constitution of this State provides that the Certificates of Indebtedness aforesaid, shall be paid by the Board of Liquidation of the City Debt, and that the requisite funds shall be provided by

said Board by the sale of a sufficient number of the Constitutional Bonds of the City of New Orleans, of the issue provided for by Act 110 of the General Assembly for the year 1890, and by the amendment to the Constitution of the State submitted to the people by said Act and adopted at the general election in 1892.

That due demand has been made of said Board of Liquidation, but that it refuses to obey the mandate of the Constitution.

That the said Board of Liquidation of the City Debt is a corporation, created by Act 133 of the General Assembly for the year 1880; that its domicile is in this City, and R. M. Walmsley, Esq., is its President.

That the refusal of said Board of Liquidation to obey the mandate of the Constitution is both a disregard of duty and a denial of justice, leaving the complainants without relief by ordinary proceedings; and that a writ of mandamus should therefore issue herein.

Relators further represent that the litigation necessitated by the action of said Board will subject the claimants to expense and long delay, which should have been avoided; and that legal interest should be allowed on each certificate of indebtedness from the date of the filing of these proceedings.

Wherefore, relators pray that an alternative writ of mandamus issue herein, addressed to the Board of Liquidation of the City Debt, through R. M. Walmsley, its president, commanding the said Board of Liquidation to pay the Certificates of Indebtedness aforesaid, amounting to the total sum of one hundred and fifteen thousand five hundred and fifty-eight 33-100 dollars ($115,558.33), together with inter-

est on each of said certificates, at the rate of five per cent. per annum from this date until paid, and to provide the requisite funds by the sale of a sufficient number of the Constitutional Bonds of the City of New Orleans, of the issue provided for in Act 110 of the General Assembly for the year 1890, and by the amendment to the Constitution of the State submitted to the people by the said Act and adopted at the general election in 1892, or to show cause to the contrary, on a day to be fixed by this Honorable Court; and that, after due hearing, said writ of mandamus be made peremptory.

And relators pray for costs, and for general relief, etc.

(Signed) CHAS. J. THEARD,
ARTHUR MCGUIRK,
Attorneys.

Affidavit by Lucretia B. Wilder and Anna B. Cook, two of the relators: Being duly sworn, depose and say, that all the allegations of the above petition are true and correct.
Nov. 9, '98.

Sworn to and subscribed before me this 9th day of November, 1898.

[SEAL] CHAS. J. THEARD, *Not. Pub.*

(Signed) ANNA B. COOK,
L. B. WILDER.

Service accepted by Board of Liquidation, by R. M. Walmsley, President. Service accepted. N. O., Nov. 9, 1898.

(Signed) B. OF L. CITY DEBT, CITY OF N. O., LA.

ORDER: Let an alternative writ of mandamus issue, as herein prayed for, returnable to this Court, on Thursday, the 17th day of November, 1898, at 11 o'clock, A. M.
N. O., November 9th, 1898.

(Signed) N. H. RIGHTOR, *Judge.*

ANSWER OF THE BOARD OF LIQUIDATION.

Filed November 17, 1898.

State of Louisiana ex rel. Miss L. B. Wilder et als.
vs.
Board of Liquidation of the City Debt.

No. 57,806.
Civil District Court, Div. D.

Now comes the Board of Liquidation of the City Debt, defendant herein, and for answer to plaintiffs' petition, and for return to the alternative writ of mandamus herein, it says:

First. That it denies all and singular the allegations of the petition of plaintiffs, except so far as may be hereinafter specially admitted.

Second. Further answering, respondent shows, that it was created by Act No. 133 of 1880, and that by Section 2 of said Act it is charged with exclusive control and direction of all matters relating to the bonded debt of the City of New Orleans; that in the issue of bonds, or the application of their proceeds, respondent has not only the right, but it is made its duty, by the said Act of 1880, and other Acts amendatory thereof, or supplementary thereto, to examine and be satisfied as to the validity and correctness of any claim, either for bonds or funds under its administration, and that by Section 4 of the said Act respondent is forbidden, under heavy penalties, to purchase, exchange or retire any obligation of the City of New Orleans that shall be deemed fraudulent or invalid by any one of its members, in which latter event, it is forbidden to purchase or retire the same, until the holder or holders shall have applied to the proper Court for relief, when, if final judgment be in his favor, it shall be deemed a valid

obligation of the City; that, by the said section, severe penalties of fines and imprisonment at hard labor are prescribed for the auditing, funding, purchase, or retirement, by any member of the Board, of any obligation not deemed valid, or the use of funds in their custody and for any purpose other than those contemplated by the law.

Third. That respondent is the custodian and administrator for the purpose of meeting the interest upon, and eventually retiring, all bonds of the City of New Orleans, outstanding and unpaid at the date the Constitutional Amendment of 1892 went into effect, Premium Bonds and Constitutional Bonds, issued under said amendment, and the act carrying the same into effect, and as to every act which it has lawful power to do, in relation to the issuance of bonds, or the disbursements of moneys, which are, or come, into its possession, it is a trustee for the parties by law entitled to said bonds, and to receive the funds realized from the sale thereof, or otherwise coming into the possession of respondent.

Fourth. That all of the functions, powers, duties, limitations and restrictions pertaining or applying to respondent by said Act 133 of 1880 are recognized and confirmed by the amendment to the Constitution of the State adopted at the general election of 1892, and Act 110 (or 36) of the General Assembly of 1890, which is part of the said amendment; that the said Constitutional Amendment and act are recognized in full force and effect by Articles 314 and 318 of the Constitution of the State of 1898.

Fifth. Further answering, respondent shows, and specially pleads, in defense of this suit, that Articles 315, 316 and 317 of the Constitution of the State of

Louisiana of 1898 are unconstitutional, null and void and of no effect, on the grounds and for the reasons that they are in violation of Section 10, Article 1, and of the 14th Amendment, of the Constitution of the United States, in that they impair the obligation of contracts, specifically hereinafter set out, deprive persons of their property without due process of law, and deny them the equal protection of the laws, as is more particularly hereinafter set out.

Sixth. Further answering, respondent shows, that the direction of Article 317 of the Constitution of 1898, that your respondent provide the funds requisite to pay the claims described in Articles 315 and 316 of that instrument, by the sale of a sufficient number of the Constitutional Bonds of the City of New Orleans, of the issue provided for by Act 110 of the General Assembly of the year 1890, and by the amendment to the Constitution of the State submitted to the people by said act, and adopted at the general election of 1892, is violative of said Section 10, Article 1, and the 14th Amendment, of the Constitution of the United States; as will more fully and in detail appear from the following, to-wit:

(*a*) By Section 1 of said Constitutional Amendment of 1892, which, with Act 110 (or 36) of 1890, part thereof, is the sole authority of respondent, the creature of statute, for the issuance of said bonds, it is declared, that the former is for the purpose of retiring the then existing valid outstanding bonds of the City of New Orleans, including bond certificates, or bonds issued under the Act of the Legislature of 1882, and to retire judgments then or thereafter rendered against the City on float-

ing debt claims, prior to 1879, entitled to be funded, under Act No. 67 of 1884; that the said bonds shall be applied by respondent to the retirement of the said outstanding bonds and judgments, by the sale of the former, and application of the proceeds thereof, to pay or purchase said outstanding bonds or judgments, or by exchanging the said Constitutional Bonds for bonds on the terms and in the mode prescribed by the Legislature.

That for the payment of the interest, and principal at maturity, of said Constitutional Bonds, and other bonds then outstanding and not retired under the amendment, and for the payment of the annual allotments and premiums of the Premium Bonds of said City, the latter is authorized and directed to levy annually, and until the full payment of the said bonds, a special tax of one per cent. on all real and personal property of the City, the same to be paid over, as collected, to, and applied by, your respondent, to the payment of the interest, and principal at maturity, of the said Constitutional Bonds, outstanding bonds not retired, at the date of said amendment, and to the payment of the allotments of Premium Bonds, and premiums, extant in the hands of the holders.

The said tax is declared to be the contract right of the holders of said bonds, and that after the payment of all the annual interest on said Constitutional Bonds, and bonds not retired, as aforesaid, and the payment of said annual allotments of Premium Bonds, and premiums extant in the hands of holders, and after making provision for a sinking fund, at such time and of such amount as the Legislature

prescribes, the surplus of said one per cent. tax shall be disposed of as prescribed by the Legislature.

That Act No. 36, appearing in the published acts along with said Constitutional Amendment, as Act 110, of the General Assembly of 1890, being an act to carry into effect the said constitutional amendment, is, by the third paragraph of the latter, approved and confirmed, in all of its parts, as a contract between the City of New Orleans and the holders of the aforesaid Constitutional Bonds, Premium Bonds, and all bonds then outstanding and not retired, as aforesaid.

(*b*) That by Section 1 of said Act 110 (or 36) of 1890, the City of New Orleans was authorized and empowered to issue bonds to the extent of ten millions of dollars, in order to provide for the retirement of the then outstanding bonded indebtedness of the City of New Orleans, and such other indebtedness as, under laws then existing, was, or thereafter became, entitled to be funded into any series of bonds, Premium Bonds excepted; the said bonds to be so issued for such purposes to be known as Constitutional Bonds of the City of New Orleans.

The said bonds were directed to be delivered to your respondent, to be used for the purposes just described, in accordance with the provisions of said Act of 1890.

That by Section 2 respondent was authorized to sell and dispose of such amounts of said Constitutional Bonds as might be deemed requisite for the purposes thereafter expressed in said act.

That by Section 3 of the said Act of 1890 it is prescribed that the fund derived from said bond sales should be immediately deposited to the credit of a special fund,

called the "Bond Sales Fund;" and by said section it was declared, that the said fund should be used solely and exclusively for the following purposes:

(*A*) Retiring by payment all the then outstanding valid bonds of the City of New Orleans, matured or subject to be called, including certificates for bonds issued under the fourth section of Act No. 58 of 1882.

(*B*) Judgments then or thereafter rendered on floating debt claims, prior to 1879, entitled to be funded under Act No. 67 of 1884.

(*c*) That by Section 7 of said Act of 1890, it is made the duty of the Council of the City of New Orleans to levy for the year 1892, and annually thereafter, until the principal and interest of said Constitutional Bonds are fully paid, a special *ad valorem* tax of one per cent. upon all taxable property in the City of New Orleans.

That by Section 8 respondent is directed, beginning with the year 1892, to annually provide for the carrying of the Premium Bond plan, the payment of the interest upon the said Constitutional Bonds, and of the interest upon all other then outstanding interest bearing bonds of the City of New Orleans; and after the year 1925, for the annual sinking fund necessary to call and retire the number of bonds provided in Section 9 of the act, which are $500,000.00 annually, from and including the year 1926, until the year 1937, and thereafter $700,000.00 annually, until the whole issue shall have been cancelled and retired; that after making in each year the provisions required by said Section 8, and after deducting the expenses incurred by respondent, and after paying any deficiency in the interest fund of previous years, it is directed by said Section

8 that one-half of the surplus of said tax shall be passed to the credit of a special fund, to be known as the "Permanent Improvement Fund," to be disposed of as is afterwards provided in the Act; the other half of said surplus to be paid over to the School Board of the City of New Orleans, in addition to any fund appropriated by said City out of other funds, to be used in the maintenance and support of the public schools in New Orleans.

(*d*) That by the provisions of Section 10 of said Act the said Permanent Public Improvement Fund shall be used exclusively for the construction of permanent public improvements in the City of New Orleans, such as levees, canals, drainage stations, and the like; all ordinances of the Council therefor to be paid out of that fund, only upon approval, however, by respondent.

(*e*) By Section 11 of said Act your respondent, as established by Act No. 133 of 1880, and as constituted at the adoption of the said Act of 1890, was created a body corporate, with right of existence and succession, until January 1st, 1943; the said section further declaring, that nothing in said Act of 1890 contained should be construed to affect or change in any manner the duties, powers and functions of respondent, under laws then existing, not inconsistent with said Act, but that said duties, functions, rights and powers were confirmed and maintained in all respects.

(*f*) That the functions, powers and responsibilities of respondent, as hereinbefore set out, and as existing under the laws creating and pertaining to it, are impliedly, if not expressly, recognized and confirmed by Article 318 of the

Constitution of the State, of 1898, and are so expressly recognized as in full force and effect by Article 314, of said Constitution of the State, of 1898.

Seventh. That by Act No. 114 of the General Assembly of 1896, particularly Section 3 thereof, that portion of the funds in the hands of respondent, under the provisions of Sections 6 and 10 of Act 110 (or 36) of the General Assembly of 1890, accruing to public works, etc., meaning the one-half of the surplus of the one per cent. tax dedicated to works of permanent public improvement by said sections of the said Act of 1890, is dedicated and applied to the specific public improvement of draining the City of New Orleans, substantially in accordance with the plan for such drainage adopted by the Council of said City by Ordinance 10,091, Council Series, approved July 10th, 1895; that by Section 6 of said Act, the Drainage Commission created by the latter, to control and execute the said drainage, is given the power to raise funds for the purpose of said work, by the issuance and disposal of its negotiable bonds, to an amount not exceeding five millions of dollars, and all moneys and funds dedicated and applied by the said act to the purposes thereof, are consecrated to the payment of the principal and interest of said bonds; and your respondent shows, that the said one-half of the said surplus of the said one per cent. tax, mentioned and described in Sections 6 and 10 of said Act of 1890, are embraced within such description.

And by Section 7 of said Act of 1896, all the provisions thereof respecting the dedication and application of funds and moneys shall constitute a contract with the holder or

holders of the said bonds, the obligation of which shall not be impaired.

That by Act No. 63 of the General Assembly of 1898, the said Act of 1896 is amended in certain particulars, but the said dedication of the said funds to the payment of the principal and interest of said bonds is repeated by Section 7 thereof, which also declares that all the provisions of the act respecting the dedication and application of funds and moneys shall constitute a contract primarily with the holder or holders of said bonds, and also with every person or corporation that may have entered into contracts with the said commission; and the obligation of said contract, as to the dedication and application of funds and moneys, shall not be impaired, and may be enforced by any holder of said bonds, or by any contract creditor of said commission, by proper proceedings.

Eighth. That there have been issued and are now outstanding and unpaid $8,998,500 of said 4% Constitutional Bonds, and .....dollars of Premium Bonds, to carry which and to execute in other respects the Premium Bond plan, the sum of $359,940 is annually required; that there are ordinances passed by the Council to provide for sums due upon contracts for permanent public improvements, entered into prior to the adoption of said Act 114 of 1896, $209,985.05; of bonds issued by the said Drainage Commission, $500,000; of obligations resulting from contracts made by said Drainage Commission, outstanding and unpaid, the sum of ....dollars.

That if any burdens, other than those enumerated in the said Constitutional Amendment of 1892, and the said Act No. 110 (or 36) of 1890, be placed upon said one per cent.

tax, or made payable out of the same, or upon the funds derived from the sale of said Constitutional Bonds, there will be caused a corresponding diminution of the surplus of said tax, divided, as aforesaid, between said Permanent Public Improvement Fund, dedicated and consecrated, as aforesaid, to the payment of the bonds, said Drainage Commission, and the School Board of the City of New Orleans, for the support and maintenance of the public schools; that by Article 254 of the Constitution of 1898, it is expressly provided that the schools of the City of New Orleans shall continue to receive from your respondent the amounts to which they are entitled under the Constitutional Amendment of 1892; so that if Articles 315, 316 and 317 of the Constitution of 1898 are valid and constitutional, as regards the Constitution of the United States, which is denied, their fair construction is that they were intended to have no effect upon, and in no respect diminish, the one-half of said surplus given by the Constitutional Amendment of 1892, and the act to carry the same into effect, to the School Board of the City of New Orleans, for the support and maintenance of the Public Schools.

Ninth. Further answering, respondent shows, that in any event, in no sense waiving, but, on the contrary, insisting, upon all of the defenses hereinbefore set out, that it was beyond the power and authority of the Constitutional Convention of 1898, to adopt said Article 317 of said Constitution: that the adoption thereof was in violation and disregard of the prohibitions contained in Section 3 of Act No. 52 of the General Assembly of 1896, particularly the first paragraph thereof; by which said act

provision was made for the submission to the people of a proposition to hold a convention for the purpose of framing and putting into effect a new Constitution, and to fix the powers of said convention; that by said section it is provided that the said convention shall be and was prohibited from enacting, ordaining or framing any article or ordinance whereby the bonded indebtedness of the State, or of any parochial, municipal, levee, or other political corporation, should be affected, impaired or scaled, or the principal or interest thereof remitted, reduced, suspended, or abolished, without the consent of the holders of such bonds or securities.

That said proposition, with all its conditions and limitations, was accepted and approved by a majority of the duly qualified electors of the State, at an election held on the second Tuesday in January, 1898, upon the terms and conditions set out in said act; that there was administered by the Chief Justice of the State to each delegate of said convention the oath set out in section 4 of said act, to the effect that he would observe and obey the limitation of authority contained in the act under which the convention was assembled; that the sole authority for the assembling of said convention was the said Act of 1896, and the approval thereof by a majority of the duly qualified electors of the State, and the taking of the said oath by each delegate, as aforesaid, signified their willingness to be bound by the limitations placed by said act, and a majority of the duly qualified electors of the State; which limitations would, however, have been binding without the administration of said oath.

That said Article 317 affects and impairs, both in prin-

cipal and in interest, the 4% Constitutional Bonds of the City of New Orleans, all other bonds of said City, other than Premium Bonds, outstanding at the date of the said Constitutional Amendment of 1892, Premium Bonds, bonds issued by the Drainage Commission, contracts entered into for works of permanent public improvement by the City of New Orleans, prior to the adoption of Act 114 of 1896, and contracts entered into by the Drainage Commission for the doing of work, the execution of which was committed to them; that none of the holders of said bonds or contracts, which are indebtednesses or securities in the sense of the second paragraph of Section 3 of said Act 52 of 1896, gave their consent to the adoption of said Article 317, and hence, that the same is null and void, for a want of power in the said Convention to adopt it.

Tenth. Further answering, respondent shows, that Articles 315, 316 and 317 of the Constitution of 1898, if there was power in the Constitutional Convention to adopt them, which, as aforesaid, is denied, are, and if carried into effect, will impair the obligations of the following contracts:

(*a*) The contract with the holders of the Constitutional Bonds of the City of New Orleans created and established by the said Constitutional Amendment of 1892, and Act 110 (or 36) of 1890, which contract is that none of said bonds shall be issued, nor the proceeds of the sales thereof applied, nor any portion of the one per cent. tax thereby provided used, for any purpose other than those enumerated in said amendment and Act; and the purposes for which the said Articles of the Constitution provide for the issuance of Constitutional Bonds are not enumerated in nor authorized by the said Constitutional Amend-

ment and Act; a statement of the number and amounts of said bonds now outstanding and unpaid being herewith filed and marked Exhibit "A."

(*b*) The holders of outstanding bonds of the City of New Orleans not retired by said Constitutional Amendment of 1892, other than Premium Bonds; a detailed statement of which bonds is filed herewith as part hereof, and marked as exhibit "B."

(*c*) The holders of Premium Bonds, outstanding and unpaid; a detailed statement of which is filed herewith as part hereof, and marked exhibit "C."

(*d*) The contract or vested right in favor of the School Board of the City of New Orleans, or the schools, or the school children, or their parents, resulting from the dedication of one-half of the surplus of the said one per cent. tax found in the said Constitutional Amendment of 1892, and the Act of 1890, such portion of said surplus having been held, in Fisher vs. Board of School Directors, 48th An. 1077, to be vested right, of such a character as cannot be impaired by legislation, and if such vested right be of such character, it is equally beyond impairment by Constitutional enactment.

(*e*) The contract of the holders of ordinances of the City of New Orleans directing the payment of sums due under contracts for work of permanent public improvement entered into prior to the adoption of Act 114 of 1896; a detailed statement showing the number and amounts of said contracts, and the parties thereto, being filed herewith as part hereof, and marked exhibit "D."

(*f*) The holders of bonds issued by the Drainage Commission, and the contractors payable out of said fund; a

statement of the amount of which bonds now outstanding is filed herewith as part hereof, and marked exhibit "E."

That the said Articles 315, 316 and 317 of the Constitution of 1898, particularly the article last named, are null, void and of no effect, for the reason that they impair the obligation of the said contracts, deprive the owners thereof of their property without due process of law, and deny them the equal protection of the laws; all in violation of Section 10, Article 1, and the 14th Amendment, of the Constitution of the United States.

Further answering, respondent shows, that by law it is a trustee for the holders of all bonds of the City of New Orleans outstanding and unpaid at the date said Constitutional Amendment of 1892 went into effect, and which have not been retired under the latter; for all holders of said Constitutional Bonds; for all contractors of the City of New Orleans entitled to be paid out of the one-half of the surplus of the said one per cent. tax provided by said Constitutional Amendment of 1892, and the Act of 1890; for all contractors of the Drainage Commission, having rights upon the same said fund; for all holders of bonds issued by said Drainage Commission; for all holders of Premium Bonds; that it is a trustee of all moneys received by it for the benefit of those who are entitled to it by law; that relators have no right or title of any description to the issue of Constitutional Bonds in any amount, nor to any portion of the proceeds of the sale thereof, nor to any portion of the one per cent. tax levied and collected and paid over to respondent, under said Constitutional Amendment of 1892, and the Act of 1890.

Wherefore, respondent prays, that the alternative writ of mandamus herein issued be quashed and set aside; that plaintiffs' demand be rejected, and their suit dismissed, with costs, and for general relief.

(Signed) BRANCH K. MILLER,
Atty. for Respondent.

State of Louisiana, }
Parish of Orleans. }

Personally appeared Robert M. Walmsley, who, being duly sworn, deposes and says: that he is President of the Board of Liquidation of the City Debt, defendant herein; that the facts and allegations in the foregoing answer are true and correct.

(Signed) R. M. WALMSLEY.

Sworn to and subscribed before me this 17th day of Nov., 1898.

(Signed) W. HY. ALLEN,
Depty. Clerk.

PETITION OF INTERVENTION.

State ex rel. Miss Wilder et al vs. The Board of Liquidation of the City Debt. } No. 57,806. Civil District Court, Parish of Orleans. Div. D.

To the Honorable the Judges of the Civil District Court for the Parish of Orleans:

The petition of intervention herein of the Drainage Commission of New Orleans, a body politic created by the General Assembly of Louisiana, by the Act No. 114 of 1896, approved July 9, 1896, which Act has been amended by Act No. 63 of 1898, approved July 9th, 1898, of which

R. M. Walmsley of the City of New Orleans is President, respectfully shows:

First. That your petitioner has a legal right and interest to intervene in this cause, and to oppose the claim and demand of the relator herein, and it refers to the said acts of legislation and makes the same a part of this petition of intervention.

Second. That as appears by said Act No. 114 of 1896, the City of New Orleans devised a certain plan of drainage, and the same was adopted by the Council of said City, by ordinance of the City, approved July 10th, 1895; and the said plan of drainage and a copy of the ordinance adopting the same are hereto annexed and made part of this petition as Exhibits 1 A and 1 B; and the said plan of drainage was adopted by the General Assembly of Louisiana by said Act of 1896, with power to said Drainage Commission to modify the same as circumstances might require.

Third. That by said legislation of the General Assembly of Louisiana of 1896, that portion of the funds in the hands of the Board of Liquidation, under the provisions of Act No. 110 of the General Assembly of Louisiana of 1890, accruing to public works, etc., that is to say, to permanent public improvements, was and is dedicated and applied for the purposes of drainage of the City of New Orleans, under the provisions and for all the purposes of the said Act No. 114 of 1896, as well as all moneys and funds then under the control of the City of New Orleans, or thereafter to be received, arising from the sale of street railroad franchises and other franchises; and it was provided that all moneys or funds thus dedicated should be drawn and ex-

pended by said Drainage Commission by checks signed by the President and Secretary, and countersigned by the Mayor.

Fourth. That by the sixth section of said Act 114 of 1896, it was provided that the works performed by said Commission should, so far as possible, be done in such manner as to benefit all parts of the City, without discrimination as to locality, and in orderto raise funds for the purpose of doing such work speedily and on an extensive scale, said Drainage Commission of New Orleans should have power to issue and dispose of its negotiable bonds to an amount not exceeding $5,000,000 in sundry denominations, bearing interest at a rate not exceeding five per centum per annum, payable semi-annually, to be sold by said Commission at not less than par; and further provision was made in said section for the form and maturity of said bonds, and it was further therein provided that all moneys and funds dedicated and applied as aforesaid by said Act to the purposes thereof, were and are consecrated to the payment of the principal and interest of said bonds; and by section 7 of said act it was further provided that all the provisions of said act respecting the dedication and application of funds and money should constitute a contract with the holder or holders of bonds issued as aforesaid, the obligation of which contract should not be impaired and should be enforceable by any holder of said bonds by proceedings of Mandamus and Injunction, or by other proper proceedings in Court. That by said amending Act No. 63 of 1898, said Sections 6 and 7 of the said Act of 1896 were amended and re-enacted so as to limit such issue to $1,500,000,

in denominations of $1,000 each, and it was declared that all moneys and funds dedicated and applied to purposes of drainage aforesaid were primarily consecrated to the payment of the interest on said bonds and the redemption of the principal thereof, with the details set forth in said amending Act; and that all of the said provisions respecting the dedication and application of funds and moneys should constitute a contract primarily with the holder or holders of said bonds, as aforesaid, to the extent aforesaid, and also with each and every person or corporation that might have entered into contracts with the said Commission, and the obligation of said contract as to dedication and application of funds and moneys should not be impaired, and might be enforced by any holder of said bonds or by any contract creditor of said Commission by proceedings of mandamus and injunction, or by other proper proceedings in Court.

Fifth. That in proceedings brought by the State of Louisiana against the persons composing the said Drainage Commission of New Orleans and decided by the Supreme Court of Louisiana June 21, 1897, the said Act No. 114 of 1896 was decided to be a proper and valid act of legislation, and the contracts hereinafter set forth were entered into in view of said decision.

Sixth. That on the faith of the drainage legislation, above set forth, of 1896, the dedication and consecration of funds thereby, and the contract rights therein recognized and established, your intervenor has entered into large contracts for the construction of the work so directed to be done, and among others as follows:

With the National Contracting Co., by contract of August 9, 1897, for an amount of work estimated at	$1,768,428 00
For the Jordan Avenue Canal, with F. B. Camors, by contract of April 22, 1898, total cost	10,054 67
For Seventeenth St. Canal, with E. A. Grasser, by contract of Jan. 18, 1897, total cost	46,170 70
Tulane University, December, 1897	2,500 00
For reconstruction and excavation of certain canals, by contract with J. J. Keegan, by contract of April 2, 1898	7,341 98
Making in all a total of	$1,834,865 35

Whereon payments have been made of $317,552.05, leaving outstanding and yet to be paid upon said contracts as completed up to the 12th of May, 1898, the sum of $1,516,913.30. Since May 12, 1898, there has been paid upon said contracts, or some of them, the sum of $479,811.01, leaving still to be paid upon said contracts the sum of $1,037,102.29, which must be met with funds set apart and consecrated by the Act of 1898, No. 114, and cannot be met if said funds are reduced or impaired in anywise.

Seventh. That when said contracts were made it was well understood, and was a fact, that the funds so dedicated by said Act, coming in as they were expected to come from time to time, were not sufficient to pay for the work to be done under said contracts, especially under that of the National Contracting Company, which was the principal one in amount, as the payments would fall due, but that the bonds provided by the 6th section of the said Act of 1896

would be issued and sold in accordance with the plan of speedy and extensive work contemplated by said section.

That accordingly, under said provisions, this intervenor has advertised and sold to the highest bidder, and for sums considerably above par, its negotiable bonds made in accordance with said law to the amount or issue of $500,000, dated November 1, 1897, having forty years to run from said date, bearing interest at the rate of five per cent. per annum, payable semi-annually, and said bonds are now outstanding in the hands of *bona fide* purchasers, and it will be necessary in like manner to sell the remaining million dollars of said bonds.

Eighth. That all of the funds, so as aforesaid dedicated and consecrated by said drainage legislation to the performance of said work of drainage, and the payment of said contracts, and of the principal and interest of said bonds, issued and to be issued, are entirely and absolutely necessary and essential for said purposes, and if any of the funds coming to intervenor under said Act of 1896, from the said Law 110 of 1890, and from the portion thereby dedicated to permanent public improvements and so, as aforesaid, consecrated to the work of this intervenor, are diverted to any other purpose, such diversion will be and is hereby averred to be a violation of the provisions of the said Act No. 110 of 1890 and the Constitutional Amendment proposed thereby and adopted in 1892; and a violation of the said Acts Nos. 114 of 1896 and 63 of 1898, and an impairment of the obligation of the contracts made and established by said Act No. 110 of 1890 and by said Constitutional Amendment of 1892; and an impairment of the obligation of the said contracts so entered into by this inter-

venor with said contractors, and especially with the National Contracting Company aforesaid, and of the contracts evidenced by said bonds issued and sold by intervenors for the purpose of carrying out said contracts and to be issued and sold.

Ninth. That the contracts of intervenor hereinbefore set forth were made and entered into and its said bonds prepared and provided as aforesaid before the adoption of the Constitution of 1898, to-wit., before May 12, 1898. That the alleged assumption by the City of New Orleans of the claims of relators was not made until on and after July 26, 1898, and long after the said contracts of this intervenor had been entered into, as aforesaid; and after arrangements had been made for the issue of said bonds, and after $500,000 of same had been advertised, sold and issued as aforesaid, as will appear by the ordinances referred to and relied upon by relators.

Tenth. This intervenor further alleges that the Articles 315, 316 and 317 of the Constitution of Louisiana, and any other provisions of said instrument upon the same subject matter, as sought to be applied by relators in this proceeding, and for the purpose of obtaining the relief claimed by them herein, are illegal, null, void and unconstitutional:

1. They violate the Enabling Act No. 52 of 1896, approved July 7, 1896, of the Legislature of Louisiana, whereby the Convention that framed the Constitution of 1898, which was to be adopted without submission to the people, was strictly limited in its powers, and was prohibited from enacting or ordaining or framing any article, or ordinance on the subjects so withheld from its compe-

tence, especially any article or ordinance whereby the bonded indebtedness of any parochial, municipal, levee, or other political corporation of the State of Louisiana should be affected, impaired or scaled, or the principal or interest thereof limited, reduced, suspended or abolished, without the consent of the holders of such bonds or security, which consent has never been given by any holder.

2. They violate Section 10 of Article 1 of the Constitution of the United States, whereby the State of Louisiana is forbidden to pass any law impairing obligations of contracts.

3. They violate the provisions of Article 14 of the amendments of the Constitution of the United States, which prohibit any State from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States, or depriving any person of property without due process of law.

4. They violate the provisions of and impair the obligations of the contracts established under the enactments of said Act No. 110 of 1890 and the Constitutional Amendment submitted thereby and adopted in 1892:

(*a*) By the issue and sale of bonds for purposes not provided, but inhibited by said Act and amendment.

(*b*) By impairing and infringing upon the surplus of proceeds from the tax so provided for permanent public improvements by said Act and amendment, and so as aforesaid consecrated and dedicated to drainage by the said Act of 1896.

(*c*) By impairing the obligation of the contracts made under said Act of 1890 and Amendment of 1892, and especially provided for in Section 16 of said Act of 1890.

5. They impair the obligation of the contracts made as aforesaid by this Intervenor, and the contract obligations in favor of the holders of bonds issued and sold by intervenor under the said Drainage Act of 1896 and its amendments as aforesaid, and bonds still to be issued, which depend for their fulfillment and solution upon said funds dedicated as aforesaid by the Act of 1896 and amendments, and cannot be met unless said funds remain unimpaired.

Eleventh. That the funds dedicated to the work of intervenor being so established and limited, and said contracts having been made, and said bonds issued by it, it is the legal duty of the Drainage Commission of New Orleans to intervene herein and to protect said funds and the contracts made and the bonds issued by it. It specially claims the rights, privileges and immunities hereinbefore set up under the Constitution of the United States, as well as the other rights, privileges and immunities hereinbefore pleaded.

And the premises considered, your intervenor prays leave to intervene herein and to oppose the claims and demands of relators, and for due citation and other process, and that the demand of the relators may be rejected, and for costs and general relief.

(Signed) HOWE, SPENCER & COCKE,
Attys. for Intervenor.

Nov. 15, 1898.
Service accepted for relators.

(Signed) CHAS. J. THEARD,
ARTHUR McGUIRK,
Attorneys.

ORDER: Let this petition of intervention be filed as prayed for.

(Signed) N. H. RIGHTOR, *Judge.*

New Orleans, Nov. 15, 1898.

State ex rel. Miss L. B. Wilder et al.
vs.
The Board of Liquidation of the City Debt Drainage Commission, Intervenor.

No. 57,806.
Civil District Court,
Ph. of Orleans,
Division D.

Now come the relators, Miss L. B. Wilder and others, by their undersigned counsel, and for answer to the petition of intervention of the Drainage Commission herein filed, they deny each and every allegation contained in said petition of intervention, and deny specially that the intervenor has any interest herein.

Wherefore, relators pray that said petition of intervention be dismissed, at intervenor's cost, and for general relief, etc.

(Signed) ARTHUR MCGUIRK,
CHAS. J. THEARD,
Attys.

State ex rel. Miss L. B. Wilder et als.
vs.
Board of Liquidation of the City Debt.

No. 57,806.
Civil District Court,
Division D.

Now come the Board of Liquidation of the City Debt, defendant herein, and for answer to the petition of intervenor, it admits the facts stated therein, and submits the issues raised by said intervention to the judgment of the Court.

Wherefore, defendant prays to be hence dismissed, with costs, and for general relief.

(Signed) BRANCH K. MILLER,
Atty. for Defdt.

OPINION OF THE SUPREME COURT OF LOUISIANA.

State ex rel. Wilder et al.
vs.
Board of Liquidation of City Debt et al. } No. 13,034.

1. The surplus of the 1 per cent. tax in New Orleans set aside for permanent public improvements by Act 110 of 1890 and the constitutional amendment of 1892 is the surplus which may remain after applying the tax collected to the satisfaction of the debts and claims therein specially enumerated as those which were to be provided for through the tax.
2. The unpaid salaries for the years 1880, 1881, 1882, 1883 and 1884, of teachers in the public schools in New Orleans, under contracts with the City School Board of that City, were not debts of that City, and were not intended to fall under the provisions of the funding law of 1890 and the constitutional amendment of 1892. They only became obligations of the City by the latter's assumption of them under the constitutional amendment. The constitutional convention had the power to have those claims paid through the 1 per cent. tax, but only subordinately to the rights upon the tax in favor of creditors holding contract rights at the date of the adoption of the Constitution. Those rights could not constitutionally be impaired.
(Syllabus by the Court).

Appeal from Civil District Court, Parish of Orleans. Nicholas H. Rightor, Judge.

Action by the State, on the relation of L. B. Wilder and others, against the Board of Liquidation of the City Debt and others. Judgment for plaintiff, and defendants appeal. Modified.

Branch K. Miller, for appellant, Board of Liquidation of City Debt. Howe, Spencer & Cocke, for appellant, Drainage Commission of New Orleans. Charles J. Théard, Arthur McGuirk and Henry L. Lazarus, for appellee.

NICHOLLS, C. J. By the 315th Article of the Constitu-

tion the City of New Orleans was authorized and required to examine into, and assume payment of, the obligations of the board of directors of the public schools of the parish of Orleans for unpaid salaries of school teachers and portresses, and other legitimate claims against said school board for the years 1882, 1883 and 1884, and for unpaid salaries of school teachers and portresses for the years 1885, 1886 and 1887, then (now) in the hands of the original holders, who have in nowise parted with their rights of ownership, or pledged the same, as may be found equitably due by said board. By the 316th Article the city council was directed to issue certificates of indebtedness to the owners of said claims, when examined and found to be equitably due, and that all such certificates should be paid by the board of liquidation. The article provided that, if any of the claims aforesaid should be rejected by the city council, the decision thereon might be reviewed by any court of competent jurisdiction, and the judgment of the court thereon should, if in favor of the claimant, be likewise paid by the board of liquidation. The 317th Article directed that the funds requisite to pay said claims should be provided by the sale of a sufficient number of the constitutional bonds of the City of New Orleans of the issue provided for by Act No. 110 of the general assembly for the year 1890, and by the amendment to the Constitution of the State submitted to the people by said act, and adopted at the general election in 1892. Acting under and by virtue of the provisions of these articles of the Constitution the city council of New Orleans examined into, and assumed payment of, the school teachers and portresses of the public schools of that City for the years 1882, 1883 and 1884; and the city comptroller, by direction of the council, issued certificates of indebtedness, countersigned by the mayor, setting forth the amount due by the City to each claimant, and representing a total sum of $115,558.33. The board of liquidation, on presentation of the same to them for payment, refused to pay the same, on the ground that the mode of payment provided by Article 317 of the Constitution, to-wit., by the sale of bonds of the

issue provided for by Act No. 110 of 1890 (Const. Amend. 1892), would impair the obligation of contracts, and therefore be a violation of the Constitution of the United States. The holders of the certificates thereupon cited the board of liquidation into the Civil District Court, to show cause why a writ of mandamus should not issue against them, commanding them to pay the certificates, together with legal interest thereon, from judicial demand until paid, and provide the requisite funds by the sale of a sufficient number of said constitutional bonds. The board of liquidation answered, pleading first the general issue. Averring its right and its duty so to do, it resisted plaintiffs' demand on the assigned grounds, and prayed that their demand be rejected. The drainage commissioners of the City of New Orleans intervened in the case, joining the defendants in resisting the demand of the plaintiffs. The latter excepted to the right of the drainage commission to intervene, and its right and authority, and that of the board of liquidation, to set up the issues tendered. The district court dismissed the intervention of the drainage commission, and ordered the mandamus prayed for to issue. The drainage commission and the board of liquidation appealed.

In their brief, plaintiffs say: "It might well be asked what right the board of liquidation had to assail the validity of the Constitution of Louisiana. Created by Act No. 133 of the Legislature of 1880, the board of liquidation is merely a servant of the people. Its members are trusted clerks, charged generally with the liquidation of the city debt. That is all. They are not above the law. They are creatures of the law. If it be true that the Act of 1890, or constitutional amendment of 1892, confided to them a special trust, it is also true that they received said trust from the sovereign State of Louisiana, and that she may well modify the instructions which she had seen fit originally to give. It cannot be admitted for a moment that the board of liquidation would have the right in any case to disregard and disobey the mandate of the Constitution, and resist and defy the will of the people." A similar claim

was advanced by State vs. City of New Orleans, 42 La. An. 96, 7 South. 674, and held by this court to be not well founded. We adhere to that conclusion, and adopt as correct the reasons assigned by the court for reaching it. It by no manner of means follows that a board which owes its existence to statute authority, and has its powers and duties defined thereby, is necessarily under a continuing liability to have its future conduct and its future duties controlled by the same authority. There are doubtless cases where this power of control continues absolutely, but there are others where, though it may be continued, it is under limitations, and others again, when it ceases altogether. This question has to be determined in each case by the nature and character of the duties cast upon the board; the rights of third parties which may have resulted from an acceptance of the trust; and the duty and liability of the board itself, and its members, as resulting from the same fact. In the case just referred to the court said: "It would be passing strange, indeed, if, after the defendants here have been commanded to show cause why the relief sought against them should not be granted, they could be met, when they appear in response, with the objection that they have no standing in court." McVeigh vs. U. S., 11 Wall. 267; Baker vs. Michinard, 17 La. An 251; Pasteur vs. Lewis, 39 La. An. 11, 1 South. 307. The court further said it did not hold in State vs. City of New Orleans, 41 La. An. 156, 6 South. 592, that the City did not possess the right of pleading its unconstitutionality and that they must not be heard.

Article 254 of the Constitution of 1879, referring to the powers and duties of the legislature in respect to the City of New Orleans, said: "The general assembly at its next session after the adoption of the Constitution shall enact such legislation as may be proper to liquidate the indebtedness of the City of New Orleans and apply its assets to the satisfaction thereof. It shall have authority to cancel the charter of said City and remit its inhabitants to another form of government, if necessary." This article was adopted in view of the very many sweeping alterations

made in the Constitution in the powers of taxation, not only of the different parish and municipal corporations of the State, but of the State itself, and in the extent of legislative control over corporations, both private and public. Article 45 prohibited the general assembly from granting or authorizing any parish or municipal authority to grant any extra compensation, fee, or allowance to a public officer, agent, servant, or contractor, or authorize the payment of any claim against the State, or any parish or municipality of the State, under any agreement or contract made without express authority of law, and all such agreements or contracts should be null and void. By Article 46 the general assembly was prohibited from passing any local or special law creating corporations, or amending, renewing, extending, or explaining the charter thereof, provided this should not apply to the corporation of the City of New Orleans, or granting to any corporation any special or exclusive right, privilege, or immunity, or legalizing the unauthorized or invalid acts of any officer, servant, or agent of the State, or of any parish or municipality thereof. Article 202 declared that the taxing power might be exercised by the general assembly for State purposes, and by parish and municipal corporations, under authority granted to them by the general assembly, for parish and municipal purposes; but by Article 209 the State tax on property for all purposes whatever, including expenses of government, schools, levees, and interest, should not exceed in any one year 6 mills on the dollar of its assessed value, if the ordinance regarding the bonded debt of the State should be adopted and ratified by the people, and, if said ordinance should not be adopted and ratified by the people, said State tax for all purposes should not exceed in any one year 5 mills on the dollar of the assessed valuation, and no parish or municipal tax for all purposes whatsoever should exceed 10 mills on the dollar of valuation. Article 229, however, directed that the general assembly should provide that every parish might levy a tax for the public schools therein, which should not exceed the State tax, provided that, with such tax, the whole amount

of parish taxes should not exceed the limits of parish taxation fixed by the Constitution. In 1880 the general assembly passed Act No. 133, entitled "An act to liquidate the indebtedness of the City of New Orleans and apply its assets to the satisfaction thereof, to create a board of liquidation and prescribe their duties and to provide for a fiscal agent, and for the levying of a special tax to pay said interest." For the purpose of carrying out the purposes of the act, and liquidating the indebtedness of the City, a board, designated as the "Board of Liquidation of the City Debt," was created, to which the duty was assigned or delegated of retiring and canceling "the entire debt of the city," except the floating debt created up to the date of the passage of the act (April, 1880). The board was authorized and directed to have certain described bonds prepared, which it was declared were to be used exclusively for the purpose of negotiation or of exchange, as therein provided for. The method provided for for retiring the debt was either by the sale of the new bonds, or by their exchange for old ones. It was provided that the entire issue of new bonds to be sold or exchanged should not exceed $10,000,000. It was declared that nothing in the act should be construed as affecting Act No. 31 of 1876, known as the "Premium Bond Act;" and it was made the duty of the city authorities to turn over and transfer to the board all moneys collected on account of the tax levied in accordance with the provisions of that act; and it was made the duty of the board to apportion the proceeds of said tax, and apportion the same pro rata, and in the proportion which each form of bonded indebtedness should bear to the entire amount of the City's debt; and such portions of the said proceeds of tax as should not properly belong to the outstanding amount of premium bonds were directed to be applied to the payment of the bonds created by the act then being enacted. The act required the city council to levy an annual tax, calculated upon the assessment of the preceding year, less 20 per cent., sufficient to pay in full the interest on all the bonds issued under its provisions; and it directed that any tax levied should continue in force until superseded by a

new tax levy for the same purpose. The surplus arising from the collection of the debt and interest tax, or from the sale of assets in the hands of the board, after paying the interest coupons of the bonds to be issued under the act, were ordered to be used for the purchase and retirement of any valid bonds of the City created before the passage of the act, at a rate not exceeding 50 cents on the dollar, or, at the discretion of the board, for the retirement of the bonds created under the act, at a price not exceeding par; and the bonds or obligations purchased, exchanged, or retired were directed to be canceled. The fourth section of the act subjected the members of the board to a criminal prosecution, should they knowingly audit, fund, purchase, or retire for value any illegal obligation of the City, or use any portion of the bonds authorized to be issued, or their proceeds, for purposes otherwise than those contemplated by the act. In 1882 the general assembly, by Act No. 58 of that year, authorized the City of New Orleans to renew and extend payment of her outstanding bonds, other than premium bonds, to provide the rate of interest on the bonds as renewed or extended, and to levy a tax to pay the same. This tax, the act declared, should never exceed one-half of 1 per cent., nor be less than one-quarter of 1 per cent., on the assessed valuation of all taxable property, and should be turned over, as collected, to the board of liquidation, in the same manner as the premium bond tax, to be by them deposited to the credit of the city debt fund, and to be applied exclusively for the objects and purposes therein declared. The act directed that all funds then, or which might be at the date of the passage of the act, in the hands of the board of liquidation under the existing laws, should be deposited with the fiscal agent of the board, to the credit of the account known as the "City Debt Fund," which fund should be used exclusively to the purchase on the most favorable terms, not exceeding par, or the face value, of the outstanding bonds or coupons, or certificates therefor, of the City, which were extended or to be extended under the provisions of the act then being enacted, provided that said city

debt fund should be used first to provide for and pay the interest on the bonds and certificates contemplated in the act; and the City was directed in its annual budget, to make an appropriation to carry out the provisions of the act. The seventh section directed that the surplus proceeds of any of the premium bond tax of each year remaining in the hands of the board of liquidation, or surplus on hand at the time of the passage of the act, after all the drawn series, interest and premiums thereon, exigible or due to the holders thereof, have been provided for or fully paid, should also be deposited with the fiscal agent of the board, to the credit of the account known as the "City Debt Fund," and applied exclusively as provided in section 5. The tenth section declared that the act, in all its parts, provisions, terms, conditions, obligations, and limitations, should be deemed to be, and be, a valid, binding contract between the State of Louisiana, the City of New Orleans, its residents, citizens, and taxpayers, and the holders of the bonds authorized in the act to be extended.

In July, 1884, the general assembly passed an act known as No 67 of that session, entitled "An act to amend and reenact sections 2, 3 and 5 of an act entitled 'An act to liquidate the indebtedness of the City of New Orleans and to apply its assets to the satisfaction thereof; to create a board of liquidation and prescribe their duties; and to provide for a fiscal agent and for the levying of a sufficient tax to pay said interest,' approved April 10th, 1880; and to further provide for the redemption of the bonds authorized herein, the payment of the interest on the same when said tax is not levied; and for the disposition and sale of said assets and other property." The act so amended is the act hereinbefore referred to as Act No. 133 of 1880. The amendment to the second section consisted in extending the powers and duties of the board of liquidation so as to give it exclusive control and direction of not only all matters relating to the "bonded debt" of the City, but of all matters relating to the "judgment and bonded" debt of the City, and in altering the form and terms of the bonds which the board had been directed to have prepared. The third

section of the Act of 1880, as amended, authorized and required and made it the duty of the board to retire and cancel the entire debt of the City standing at the time of the passage of the amending act in the form of executory judgments, and registered under the provisions of Act No. 5 of 1870, and that which thereafter might become merged into executory judgments, and likewise registered, except the floating debt, or claims created for and against the year 1879 and subsequent years. It declared that it was the full intent and meaning of the amending act to apply solely the privileges thereof to executory judgments at that time rendered (the passage of the new act) against the City, and to such floating debt or claims against said City for 1878 and previous years merged and to be merged into executory judgments, whether absolute or rendered against the revenues of any particular year or years previous to the year 1879. For the purpose of retiring and canceling said judgment debt the board was authorized and required either to sell the bonds to be issued under the act at not less than their par value, and apply the proceeds thereof to the payment of the said judgments as specified, or to issue said bonds in exchange thereof. In July, 1890, the general assembly passed an act which appears in the published acts of that session under the number 110, but is referred to in the amendment to the Constitution of 1879, adopted in 1892, as Act No. 36. This act, though it preceded the adoption of the amendment, was entitled, "An act to carry into effect the constitutional amendment passed at the present session of the Legislature, relative to the bond debt of the City of New Orleans, and to authorize and direct the said City to issue through the board of liquidation of the city debt, four per cent. bonds to be known as the Constitutional Bonds of the City of New Orleans, payable fifty years from date; and to direct the retirement of the now outstanding bonded debt of said City, premium bonds excepted, by the sale of said constitutional bonds and application of proceeds by the board of liquidation to the payment of said outstanding bonds, premium bonds excepted, and to the payment also of certain judg-

ments against the City on floating debt claims created prior to 1879, and to authorize the purchase by said board of said outstanding bonds, other than premium bonds, or, the exchange thereof for said constitutional bonds, and for the payment of said constitutional bonds and of the aforesaid outstanding bonds, not retired under this act, and for the payment of the annual allotment of premium bonds and premiums; to direct the levy and collection by the City of the tax of one per cent. now levied for the bond debt, and to direct the payment to and application by the board of liquidation of said taxes, to the purposes aforesaid for which it is levied, and to provide a sinking fund for said constitutional bonds; and for the disposition of the surplus of said tax not required for the aforesaid bond debt, and to recognize said tax as the contract right of the holders of the aforesaid bonds, and to recognize also the exemption of said constitutional bonds from all taxation, and to define the functions and powers of said board of liquidation." The first section of that act declares that, in order to provide for the retirement of the outstanding bonded indebtedness of the City of New Orleans, and such other indebtedness as, under existing laws, is or becomes entitled to be funded into any series of bonds, always saving and excepting, however, the bonds known as "premium bonds," the City of New Orleans be authorized, empowered, and directed to issue bonds to the amount of $10,000,000, described as to their form and terms. It directs that these bonds, when executed, should be delivered to the board of liquidation of the city debt to be used for the purposes aforesaid in accordance with the provisions of the act. The second section authorized and empowered the board to sell and dispose of such amounts of said constitutional bonds as might be requisite for the purposes expressed in the later section of the act, and fixed the terms and conditions on which they should be sold. The third section directed that all the funds received by the board from the sale of constitutional bonds should be immediately deposited with the fiscal agent of the City of New Orleans to the credit of a special fund called the "Bond Sales Fund,"

which said fund should be used solely and exclusively for the purpose of retiring by payment all the said now outstanding valid bonds of the City of New Orleans matured or subject to be called upon, including the certificates or bonds issued under the fourth section of Act No. 54 of 1882, and including judgments then or thereafter rendered on floating debt claims prior to 1879, entitled to be funded under Act No. 67 of 1884, but excluding premium bonds issued under Act No. 31 of 1876, not to be retired under the act. The fourth section gave the board power, after the payment of all aforesaid outstanding bonds subject to call or matured, as provided in the third section, to purchase the unmatured outstanding bonds of the City, premium bonds always excepted, and fixed the terms and conditions under which the purchase could be made. The fifth section authorized the board to exchange bonds issued under the act for valid outstanding bonds of the City, premium bonds excepted, and fixed the manner, terms, and conditions under which the exchange could be made. The seventh section made it the duty of the council, in order to provide for the payment of the principal and interest of the constitutional bonds authorized to be issued by the act, and all other valid outstanding bonds of the City, to levy for the year 1892, and annually thereafter, until the principal and interest of the bonds authorized to be issued were fully paid, a special ad valorem tax of 1 per cent. upon all the taxable property of the City; said special tax to be a part of, and not in addition to, the tax of 20.2 mills on the dollar of value then levied for all purposes by the City of New Orleans. The eighth section directed that out of the proceeds of said 1 per cent. per annum tax, beginning in the year 1892, the board of liquidation should annually provide for the carrying of the premium bond plan, the payment of the interest upon the bonds, authorized to be issued by the act, and of the interest upon all other outstanding interest-bearing bonds of the City, and after the year 1925 for the annual sinking fund necessary to call and retire the number of bonds provided for in section 9

of the act. It further directed that, after making in each year the provisions above required, and after deducting the expenses incurred by said board, and after paying any deficiency in the interest fund of any previous years, one-half of the surplus should be passed to the credit of a special fund to be known as the "Permanent Public Improvement Fund," to be disposed of as disposed of later in the act; and the other half of said surplus should be paid over to the school board of the city, in addition to any other fund appropriated by the said city out of other funds, to be used in the maintenance and support of the public schools in said city. The tenth section directed that "the permanent public improvement fund" should be used exclusively for the purpose of the construction of permanent public improvements in the city, such as levees, canals, drainage stations, pavements, public buildings, public parks, and bridges, and required that all ordinances passed by the common council to be paid out of this fund should be first approved by the said board of liquidation, who should not draw any check on said fund unless they should be convinced upon proper inquiry that said ordinance covered the construction of a permanent improvement within the purview of the act. It was declared in the section that the true meaning of this clause was not to give said board any authority to say to what permanent public improvement any fund should be applied, but only to see that said funds should be applied exclusively to the construction of improvements that are permanent. In the eleventh section of the act the board of liquidation was created a body corporate with power to sue and be sued. It was declared that nothing in the act should be construed to affect or change in any manner the duties, powers, and functions of the board of liquidation under existing laws not inconsistent with it or the rights of said board to the assets and property of the City not dedicated to public use, including the uncollected taxes prior to 1879: but said duties, functions, rights, and powers were maintained and confirmed in full force. The sixteenth section declared all the substantial provisions of the act to be a contract be-

tween the State of Louisiana, the City of New Orleans, the taxpayers of said City, and each and every holder of said constitutional bonds. The eighteenth section declared that nothing in the act contained should be construed to affect or disturb in any manner the existing right to the tax now (then) levied for premium bonds, and for said outstanding bonds not retired; said tax being preserved in full force, and the payment of the allotments of premium bonds and premiums extant in the hands of holders, and of the interest and principal at maturity of all outstanding bonds that might not be retired under the act, should it continue as now (then) directed under existing laws; said tax of one per cent. being levied for premium bonds and outstanding bonds not retired, as well as for the aforesaid constitutional bonds substituted for the outstanding bonds paid, purchased, or retired by exchanges under the act. The nineteenth section declared the general provisions of the act should not take effect until the adoption of the constitutional amendment then contemplated, and repealed all laws or parts of laws contrary to or inconsistent with the act. The constitutional amendment referred to was submitted to and adopted by the people, and was as follows: "For the purpose of retiring the now existing valid outstanding bonds of the City of New Orleans, including the bond certificates or bonds issued under the Act of the Legislature No. 58 of 1882, and to retire judgments now or hereafter rendered against the City on floating debt claims prior to 1879, entitled to be funded under Act No. 67 of 1884, the said City of New Orleans is hereby authorized and directed, on and after the adoption of this amendment, to issue through the board of liquidation of the city debt bonds to be known as the Constitutional Bonds of the City of New Orleans, not exceeding ten millions of dollars, at fifty years, bearing four per cent. per annum interest, to bear date and be in the form prescribed by the legislature. The said bonds shall be applied by the said board to the retirement of said outstanding bonds and judgments, by the sale of said constitutional bonds, and application of the proceeds of sale by

the board of liquidation, to pay or purchase said outstanding bonds and judgments, or by exchanging the said constitutional bonds for bonds, on the terms and in the mode prescribed by the legislature. For the payment of the interest and principal at maturity, of said constitutional bonds, and other outstanding bonds not retired under this amendment, and for the payment of the annual allotments and premiums of the premium bonds of said City, the said City is hereby authorized and directed to levy annually, and until the full payment of said bonds, a special tax of one per cent. on all the real and personal property of the City, said tax to be part of and not in addition to the tax of twenty mills and two-tenths of a mill on the dollar of valuation now levied for all purposes by the City of New Orleans, and the said tax shall be paid over as collected to and be applied by the board of liquidation, to the payment of the interest and principal at maturity of said constitutional bonds, and outstanding bonds not retired, and to the payment of the allotments of premium bonds and premiums extant, in the hands of holders. Said tax is hereby declared to be the contract right of the holders of all said bonds; and the exemption of said constitutional bonds from all taxation by the City of New Orleans and State of Louisiana, hereby recognized and declared, and after the payment of all the annual interest on said constitutional bonds and bonds not retired and the payment of the said annual allotments of premium bonds and premiums extant in the hands of holders, and after making provisions for a sinking fund, at such time and of such an amount as the legislature prescribes, the surplus of said one per cent. shall be disposed of by the legislature." The act passed at the present session—No. 36—entitled, "An act to carry into effect the constitutional amendment passed at the present session relative to the bond debt of the City of New Orleans," etc., "be and is hereby approved and confirmed in all its parts as a contract between the City of New Orleans and the holders of said constitutional bonds, premium bonds and of the bonds outstanding not retired as aforesaid. The City of New Orleans is

hereby authorized and empowered to examine into and assume the payment of the claims and obligations of the board of school directors for the City and parish of Orleans due for the years 1880, 1881, 1882, 1883 and 1884, now on the hands of original owners, who have in nowise parted with their right of ownership, or pledged the same, as may be found to be equitably due by said board for services rendered, labor performed or materials furnished, by authority of said board." In 1896, by Act No. 114, the general assembly created a drainage commission for the City of New Orleans. It gave the commission full power to control and execute the drainage of the City, authorizing it to proceed to execute and carry out substantially the plan for such drainage adopted by the council of said City by Ordinance 10,091, C. S., approved July 10, 1895, so far as it might find said plan desirable and practicable, with the right, however, to modify the same as in its judgment circumstances might require. All work done, or supplies and materials ordered by the commission, were directed to be let out to the lowest bidder. In order to raise funds for the purpose of doing the work speedily and on an extensive scale, the commission was given power to issue and dispose of its negotiable bonds, bearing interest at a rate not exceeding 5 per cent. per annum, payable semi-annually, to be sold by the commission at not less than par. That portion of the funds in the hands of the board of liquidation under the provisions of sections 6 and 10 of Act No. 110 of 1890, accruing to public works, etc., from January, 1898, was dedicated and applied for the purposes of the act, and all moneys and funds at the time of the passage of the act, under the control of the City of New Orleans, and afterwards to be received, arising from the sale of street railroad franchises, or other franchises, were also dedicated and applied to the purposes of the act. All moneys and funds dedicated and applied for the purposes of the act were declared to be consecrated to the payment of the principal and interest on said bonds. It was declared that all the provisions of the act respecting the dedication and application of funds and money,

constituted a contract with the holder or holders of bonds issued, the obligation of which contract should not be impaired. In 1898, by Act No. 63, the general assembly amended and re-enacted Sections 6, 7 and 8 of Act No. 114 of 1896, creating the drainage commission. Under the amendment to Section 6, the amount of bonds which the drainage commission had been authorized to issue was reduced from $5,000,000 to $1,500,000. In the same amending section it was declared that all moneys and funds dedicated and applied by the act to the purposes thereof were primarily consecrated to the payment of the interest on said bonds, and the redemption of the principal thereof, as provided in the act, but any surplus of said funds inuring to said commission from taxes of 1899, 1900, 1901 and 1902, and from other sources prior to January 1, 1893, not required to pay current interest on said bonds, might be used for the general purposes of said commission. The commission, after the year 1920, was given the right, and it was made its duty, to call in and pay not exceeding $200,000 of said bonds in each year, and in the order of their issue, beginwith No. 1. By the seventh section of the act, its provisions respecting the dedication and application of funds and moneys were declared to constitute a contract primarily with the holders of said bonds as aforesaid to the extent as aforesaid, and also with each and every person or corpotion that may have entered into contracts, with the said commission; and it was further declared that the obligation of said contract as to dedication and application of funds and moneys should not be impaired as might be enforced by any holder of said bonds, or by any contract creditor of said commission by mandamus and injunction, or by other proceedings in court.

In 1886 this Court was called upon in Labatt vs. City of New Orleans, 38 La. An. 284, to pass upon the right of the plaintiff therein, declaring on certificates issued by the board of directors of the public schools of the City of New Orleans during the years 1874, 1875, and 1876, to recover judgment thereon against the City of New Orleans; the ulterior object being to obtain there-

for bonds of said City to be issued under the provisions of Act No. 67 of the Legislature of 1884, which was amendatory of Act No. 133 of 1880, passed for the purpose of liquidating the indebtedness of the City of New Orleans. The court in its opinion stated that the main contention hinged upon the question as to whether such certificates evidenced or not an indebtedness of the City of New Orleans; that plaintiff's argument was that those certificates constituted a part of the indebtedness of the City of New Orleans, but that, if when issued they were not debts of the City, they had acquired that character under a correct construction of Article 254 of the Constitution of 1879 and of Section 3 of Act No. 74 of 1880, which proposed to enforce the provisions of Article 254 of the Constitution. After an examination of the certificates, the court was of the opinion that they were not evidences of debt against the City, and their holders had no right to obtain judgment against the City, with a view to have the same converted into bonds under the provisions of Act No. 67 of 1884; that that portion of Act No. 74 of 1880 which placed the unpaid salaries of school teachers subsequent to 1872 and prior to January 1, 1880, on the same footing with the valid indebtedness of the City of New Orleans, and authorized bonds might be issued to take up school board certificates which had been issued for the same, was unconstitutional, and therefore void. Referring to plaintiff's argument, that this act was authorized by Article 254 of the Constitution, reading, "that the general assembly * * * shall enact such laws as may be proper to liquidate the indebtedness of the City of New Orleans and apply its assets to the satisfaction thereof," the court said: "It can scarcely be argued that by this language the convention could be construed to have meant that the legislature could provide for the liquidation of claims which were not part of the indebtedness of the City of New Orleans, or that such language could possibly be strained to mean that the legislature was therefore vested with the power to coerce the City of New Orleans into the settlement of school certificates which had issued without her

authority or consent, by an irresponsible board or corporation, for or without valuable consideration, and perhaps in direct violation of the very law whence such board could derive its only legitimate authority. The language of the Constitution can authorize no such deductions, and its proper construction would at once strike with nullity any attempt of the legislature to fasten on the City of New Orleans the obligation to settle or liquidate any claims which are not legally and unequivocally included in the term 'indebtedness.' The very letter and the undoubted spirit of the constitution are most obviously adverse to any such proposed legislation. They go to the extent of forbidding such action even with the consent of the corporation." In 1888 the general assembly in Act No. 81 of that year provided that the city council of New Orleans, in making their annual budget of expenditures, should include therein the amount deemed necessary to meet the expenses of the schools, and keep in good repair school houses and grounds as may seem reasonable and just, provided it should not exceed the statement of the school board to be previously made, and shall not be less than $250,000, whereof $75,000 is to be paid out of the reserve fund of 20 per cent. contributed by Section 66 of Act No. 20 of 1882, and Act No. 109 of 1886, from which certain claims against the board shall be gradually paid so as to be extinguished in 1896. The act authorized the board, if necessary, to enforce its provisions by mandamus. The City having refused to make appropriations as directed, the board sought, by judicial proceedings, to force it to do so through mandamus. State vs. City of New Orleans, 42 La. An. 94, 7 South. 674. The City defended upon the ground that the general assembly was attempting to amend its charter in a prohibited manner, and, requiring it to pay through the board of directors a debt which it did not owe, the district court refused the mandamus, and the supreme court on appeal affirmed the judgment. In the course of its opinion this court said: "It is elementary that a State, in the absence of constitutional prohibition, may delegate part of her political and administrative powers to

municipal corporations within her borders, which then become State functionaries; and that, whenever such delegation may take place, the State can confer on them certain rights, which she may subsequently extend, abridge, or withdraw, as may seem just and advisable, but without impairing the obligation of contracts. This privilege of delegation is essential in the very nature of things, as otherwise the local administration necessary for public good would be an impossibility in consequence of the practical inability of the State general government to well provide by itself for the regulation of administrative matters on numerous important details in the different parts of the State. The organic law may, however, check the incidental rights of the legislature, so that, when constitutional restrictions have been imposed, the limitation is paramount, and the legislature is impotent. Indeed, it is a question settled beyond the possibility of reasonable doubt, and which needs no reference to authorities to be verified, that the supremacy of the legislature over a municipal corporation, in many respects, is restrainable by qualifications placed by the Constitution in terms, or by fair implication. It is clear that the legislature can no more transgress a State Constitution than a convention can violate the federal Constitution, or than a municipal corporation can override its charter, valid laws affecting it and the federal or State Constitution. * * Although, under an express constitutional provision, the legislature has authority to cancel its charter and remit its inhabitants to another form of government (Article 254), that body has no right to compel its representatives by whatever name, under its actual or under an eventual form of government, to do that which parochial or municipal corporations cannot be forced to do. So that if, by the terms of the Constitution or fair implication from them, it appears that the legislature has no right to compel a municipal corporation to do that which the Constitution says the legislature may authorize it to do, and if the legislature undertakes to go beyond its power of authorization, its action is nugatory."

In State vs. Police Jury, 47 La. An. 1244, 17 South. 792,

we had occasion to examine into this same question as to the power of control of the general assembly over the powers of taxation, the actions, and the funds of a municipal corporation, in view of constitutional restrictions and limitations, and reached the same conclusions which had been reached in 42 La. An. 94, 7 South. 674, by our predecessors. Under the principles announced in the cases cited, the unpaid salaries of school teachers in the public schools of the City of New Orleans for the years 1880, 1881, 1882, 1883, and 1884, were not debts of the City of New Orleans at their origin, and could not be made so by mere legislative authority. Their status in this respect remained unchanged up to the amendment to the constitution of 1879, adopted by the people of the State, which authorized and empowered, but did not compel, the City of New Orleans to examine into and assume the payment of the claims of teachers for these particular years. The vote of the people of New Orleans on the adoption of that amendment was 34,366 votes for and 599 votes against the same. The effect of the adoption of that amendment was not to constitute those claims ipso facto debts of the City. The City only became committed to payment of the same by its subsequent voluntary act. The amendment designated no time or method or means for the payment of these claims, if and when assumed. The indebtedness of the City covered by Act No. 110 of 1890, which the amendment "recognized and confirmed in all its parts," for the funding and payment of which the legislature was therein providing through bonds not to exceed $10,000,000 in amount, was the then existing "valid outstanding bonds of the City of New Orleans, including the bond certificates or bonds issued under the Act No. 58 of 1882, and judgments then rendered or thereafter to be rendered against the City on floating-debt claims prior to 1879, entitled to be funded under Act No. 67 of 1884." The funding or payment of the unpaid salaries for the years 1880, 1881, 1882, 1883, and 1884, of public school teachers, was evidently not contemplated by this act. The debts to be funded, and for which provision for payment

through bonds was therein made, were specifically enumerated, and the taxes authorized and directed to be levied by the act were dedicated and devoted especially and primarily to the satisfaction of those particular debts as under a contract obligation. The surplus of the 1 per cent. tax referred to in the act was the surplus "after the payment of all the interest on said constitutional bonds and bonds not retired, and the payment of the annual allotments of the premium bonds, and premiums extant in the hands of holders, and after making provision for a sinking fund at such time and of such amount as the legislature prescribed. This surplus was authorized to be disposed of by the legislature. The legislature disposed of it in the eighth section of Act No. 110 of 1890. After declaring in what way the 1 per cent. tax should each year be primarily disposed of, the general assembly used the following language: "After making in each year the provision above required, and after deducting the expenses incurred by said board, and after paying any deficiencies in the interest fund of any previous years, one-half of the surplus should be passed to the credit of a special fund, to be disposed of as disposed of later in the act, and the other half of said surplus should be paid over to the school board of the City in addition to any other funds appropriated by said City out of other funds to be used in the maintenance and support of the public schools in said City." The disposition of the permanent improvement fund, which the eighth section declared was to be made "later in the act," was made in its tenth section. The general assembly had, as we have seen, by its Act No. 114 of 1896, given special direction as to the permanent improvement fund, ordering it to be used for city drainage. It had organized a drainage commission to take charge of that subject, and, for the purpose of raising funds for the purpose of doing the work speedily and on an extensive scale, had given power to the commission to issue and dispose of its negotiable notes to an amount of $5,000,000, and that portion of the funds in the hands of the board of liquidation accruing to public works, un-

der Sections 6 and 10 of Act No. 110 of 1890, had been by it dedicated and appropriated as under a contract obligation for the payment of these bonds. The drainage commission duly organized, and at the time of the adoption of the Constitution it had created obligations to a large amount, payable out of the surplus. We do not understand it to be claimed that the holders of claims for unpaid salaries for the years 1880, 1881, 1882, 1883 and 1884, of teachers in the public schools of New Orleans, were entitled to have their claims funded or paid under the Act of 1890, but that their pretensions rest exclusively upon the effective force of Articles 315, 316 and 317 of the Constitution 1898, which effective force the defendants question. In discussing this matter, we have to deal, not with the powers of the legislature, but of those of a convention not only over corporations and corporate acts, but over the legislatures and legislative acts.

In State vs. Mayor, etc., of City of New Orleans, 32 La. An. 714, this court said: "A constitution framed by a convention of the people, especially after having been submitted to and ratified by a vote of the people, is the ultimate expression of the will of the sovereignty itself. Its provisions may control with plenary power all private and social rights and all existing laws and institutions, and may even violate the most fundamental rule of justice, provided, only, they do not conflict with the provisions of the Constitution of the United States, which, with regard to the subjects controlled by them, and to those alone, form the paramount law of the land. No court has the right to question the validity of any provision of a State Constitution, however unwise, impolitic, or unjust it may be upon any other ground whatever than that it violates the Constitution of the United States. Cooley, Const. Lim. p. 34. It follows, therefore, that the provision of the Constitution of 1879 must have full force against all persons and against all rights except so far as its operation is restrained by the Constitution of the United States." The court said, "it was useles to discuss limitations upon the powers of the legislature imposed by the Constitution of 1868, because those

limitations had no force over the power of the convention." This last statement was made, of course, with reference to matters not controlled by the provisions of the Constitution of the United States. The application of these principles to the matters presented to us in this case confines our inquiries to a very narrow range: Are the provisions of Articles 315, 316, and 317 of the Constitution violative of any of the provisions of the Constitution of the United States? It is claimed they violate the obligations of contracts, and therefore should not be enforced.

The first point to which we direct our attention is as to the power and extent of the power of the convention over the subject of the drainage of the City of New Orleans, or of matters falling under the term "permanent public improvement." Was there anything in the situation of affairs when the convention met which had conferred upon New Orleans, as a city, an absolute vested right to determine for itself for the future, free from all legislative or constitutional control, the extent to which permanent improvements should be made within its limits,—the selection of the objects of permanent improvement or the amounts to be expended for that purpose? Unquestionably not. The convention would have had the right to have ordered the City, as such, to have desisted from improvements of a particular kind, either permanently or for a limited time, with the privilege of continuing later on, or to alter the character or kind of improvements, or the amount which should be expended for the same. The corporation would in vain urge that the course pursued was detrimental to its interests; that it would be checked in its progress; that the public health would be impaired. It would be forced to yield to a superior power legally controlling these matters, however disadvantageously the power might be exercised. Neither the City nor the drainage commission could legally object that the extent or scope of the system of permanent improvement would be restricted by the withdrawal or funds needed to make that system complete or successful. The work could have been stopped at any time, though the

rights of contract creditors as they existed at the date of the action of the convention could not have been by it impaired. Our examination on this branch of the case as to the effect of enforcing Articles 315, 316, and 317 of the Constitution will go no further than to see whether contract creditors having rights upon the permanent improvement fund would be impaired or not. Defendants assume that the mere fact that constitutional bonds should be sold for the purpose of paying the certificates held by relators, or should be given in exchange for those certificates, would of necessity entitle the holders of such bonds to prime the holders of permanent improvement bonds—bonds drawn against the surplus of the one per cent. tax—dedicated to permanent public improvements, and also to necessarily come in on a footing of equality with all the other holders of consolidated bonds, and they maintain, if this be true, the rights of contract creditors under the funding act would be impaired.

Relators, on the other hand, insist that the only portion of the 1 per cent. tax ever set aside for permanent public improvements was one-half of the surplus produced by the tax which would remain after having retained in the hands of the board of liquidation enough to meet the payment in full of a $10,000,000 issue of consolidated bonds, and that, therefore, it would be legally immaterial to creditors basing contracts on such surplus to whom the other portion of the fund would go. It would be enough for them to know it would not go to them, and relators urge that other holders of consolidated bonds would have no ground of complaint; that they should be permitted to share equally with them from the tax fund, as they had accepted their bonds on the expected basis of coming in concurrence with an issue of ten millions of bonds. That they might be interested that the limit as to the amount of the bonds should not be passed, but they were without legal interest, when the limit should not have been passed as to who should be the holders of the bonds sharing the fund with them. In support of this last position, they rely upon the decision of the Supreme Court of the United States in Board vs.

McComb, 92 U. S. 531. If the collection of the 1 per cent. tax would suffice to pay each year the holders of consolidated bonds issued in taking up or retiring the bonds and claims such as were provided for by Act No. 110 of 1890 and the constitutional amendment of 1892, without any conflict with the bonds ordered to be sold by Article 317 of the Constitution of 1898, the former, of course, would have no cause of complaint; but if, from any cause, the amount of the tax collected would be insufficient for that purpose, we do not think the holders of these latter bonds could force the former to prorate with them the amount in hand. This condition of things is not existing. It may never arise, and should it arise, the Board of Liquidation would doubtless have taken steps to distinguish bonds issued under Article 317 from those which had been otherwise issued. It does not necessarily follow that all claims payable out of a particular tax should stand on a footing of perfect equality as to payment. If, from any legally existing cause, there would be priority of right, there would be priority of payment. We have an example of this in the matter of the priority or preference payment of the salaries of the constitutional officers of the State over warrants for ordinary claims, though all are payable out of the general fund (State vs. Burke, 32 La. An. 1213), and it has been held that amounts needed for the alimony of the City have to be paid out before those for other purposes are paid. Moore vs. City of New Orleans, 32 La. An. 729; Saloy vs. City of New Orleans, 33 La. An. 79. So, also, it sometimes happens, from special circumstances, that the holder of one or more of the same series of notes may hold rights subordinated to those of the holders of the others. If there should be, in the future, any actual conflict of interests, the Board of Liquidation and the parties interested will doubtless have taken steps to be able to protect themselves. We do not take the same view that relators do as to what was meant by, and intended to be conveyed by, the surplus referred to by Act No. 110 of 1890, Act No. 114 of 1896, and the Constitutional Amendment of 1892. We

think the law makers intended that any portion of the 1 per cent. tax provided for in Act No. 110, not needed for the payment or retirement of the particular bonds or claims therein specially provided for as to payment or retirement, should constitute the surplus of the tax, and that it was not contemplated when these laws were passed, or the amendment of 1892 adopted, that, in order to exhaust any portion of the $10,000,000 originally expected to be needed to pay the existing bonds and the existing claims therein especially enumerated, which might not be necessary for that purpose, new classes of claims should or would be thrown under the provisions of the original funding law. We think the surplus was intended to connect at once and follow immediately behind as to its appropriation the amount beyond that actually needed to carry out the plan as originally mapped out and planned. The surplus was provisionally ascertained each year in a manner particularly specified, to be readjusted the next in a manner also particularly specified. All the surroundings and circumstances connected with the legislation negative the idea that the surplus mentioned was to be only any surplus over $10,000,000 which might result from the collection of the 1 per cent. tax. We think the board of liquidation, the drainage commissioners, and those with whom they contracted, were justified in placing that interpretation upon the legislation, and that contract rights based upon the same should be protected from impairment. The convention, while ordering the payment of the certificates held by the relators through sales of consolidated bonds, could not confer upon the holders of such bonds rights which in any way would come im competition with the contract rights of creditors existing against the tax at the time of the adoption of the Constitution. Though there was no mention in the Constitution as to the rank of the bonds which would be issued to take up relators' certificates, that rank resulted from legally existing conditions which could not be constitutionally interfered with. There is no constitutional objection to the convention ordering the Board

of Liquidation to sell bonds to take up the relators' certificates, but there would be constitutional objection to be urged if the effect of the issuing of such bonds would be to place the holders thereof on an equality with the holders of bonds issued to take up the bonds and claims provided for as to their funding and payment by Act No. 110 of 1890, Act No. 114 of 1896, and the Constitutional Amendment of 1892. Duperier vs. Police Jury, 31 La. An. 710; Shields vs. Pipes, 31 La. An. 765. The consolidated bonds which relators seek to have issued upon their prayer will really be drawn against (when issued) any surplus which will remain of the 1 per cent. tax after the payment of all the bonds issued and to be issued by the board of liquidation, under Act No. 110 of 1890 and the Constitutional Amendment of 1892, in order to fund and retire and pay the bonds and debts therein specially enumerated, and also the bonds issued and to be issued by the drainage commission, under the provision and authority of Act No. 114 of 1896, to pay the contracts existing at the date of the adoption of the Constitution, which were entered into upon the faith of the surplus directed to be set aside to the credit of the permanent improvement fund by Act No. 110 of 1890, Act No. 114 of 1896, and the Constitutional Amendment of 1892. The effect of this will be to subordinate the rights of holders of bonds issued by the drainage commission to pay for contracts entered into after the adoption of the Constitution of 1898 to those of the holders of consolidated bonds to be issued under the orders of Article 317 of the Constitution of 1898. This may check and impede the work of public improvement, but it is a matter which we cannot control.

For the reasons assigned, it is hereby ordered, adjudged, and decreed that the judgment of the district court be, and the same is hereby, affirmed, except as to the interest allowed, which interest is hereby reduced from 5 to 4 per cent.; costs of appeal to be borne by appellees.

MONROE, J., takes no part, as he was not a member of the court when the case was submitted.

No. 110.] JOINT RESOLUTIONS

Proposing an amendment to the Constitution providing for the funding of the bonded debt of the City of New Orleans, other than premium bonds, into 4 per cent. bonds, providing a special tax of 1 per cent. to pay the bonded debt of the City, and exempting the said 4 per cent. bonds from taxation, and further authorizing the said City to assume and pay such unpaid claims to the Board of School Directors of said City and Parish which it may find to be equitably due by said board.

Sec. 1. Be it resolved by the Senate and House of Representatives of the State of Louisiana, two-thirds of all the members elected to each house concurring, That the following amendments to the Constitution of the State be submitted to the electors of the State at the next election for Representatives for the General Assembly in the year 1892, for the purpose of retiring the now existing valid outstanding bonds of the City of New Orleans, including the bond certificates or bonds issued under the Act of the Legislature, No. 58 of 1882, and to retire judgments now or hereafter rendered against the City on floating debt claims prior to 1879, entitled to be funded under Act 67 of 1884, the said City of New Orleans is hereby authorized and directed, on and after the adoption of this amendment, to issue through the Board of Liquidation of the City Debt, bonds to be known as the Constitutional Bonds of the City of New Orleans, not exceeding ten millions of dollars, at fifty years, bearing 4 per cent. per annum interest, to bear date and be in the form prescribed by the Legislature. The said bonds shall be applied by the said board to the retirement of said outstanding bonds and judgments, by the sale of said Constitutional Bonds and application of the said proceeds of sale by the Board of Liquidation, to pay or purchase said outstanding bonds and judgments, or by exchanging the said constitutional bonds for bonds, on the terms and in the mode prescribed by the Legislature. For the payment of the interest and principal at maturity, of said constitutional bonds, and other outstanding bonds not retired under this

amendment, and for the payment of the annual allotments and premiums of the premium bonds of said City, the said City is hereby authorized and directed to levy annually, and until the full payment of said bonds, a special tax of one per cent. on all the real and personal property of the City, said tax to be part of, and not in addition to the tax of twenty mills and two-tenths of a mill on the dollar of valuation now levied for all purposes by the City of New Orleans, and the said tax shall be paid over as collected to, and be applied by, the Board of Liquidation, to the payment of the interest and principal at maturity of said Constitutional Bonds, and outstanding bonds not retired, and to the payment of the allotments of premium bonds and premiums extant in the hands of the holders.

Said tax is hereby declared to be the contract right of the holders of all said bonds, and the exemption of said Constitutional Bonds from all taxation by the City of New Orleans, and State of Louisiana, is hereby recognized and declared, and after the payment of all the annual interest on said Constitutional Bonds and bonds not retired, and the payment of the said annual allotments of premium bonds and premiums extant in the hands of holders, and after making provisions for a sinking fund, at such time and of such an amount as the Legislature prescribes, the surplus of said one per cent. shall be disposed of as prescribed by the Legislature.

The act passed at the present session, No. 36, entitled, "An act to carry into effect the Constitutional Amendment passed at the present session relative to the bond debt of the City of New Orleans," etc., be and is hereby approved and confirmed in all its parts as a contract between the City of New Orleans and the holders of the aforesaid Constitutional Bonds, premium bonds and of the bonds outstanding not retired as aforesaid.

Sec. 2. Be it further resolved, etc., That the City of New Orleans be and is hereby authorized and empowered to examine into and assume the payment of the claims or obligations of the Board of School Directors for the City and Parish of Orleans due for the years 1880,

1881, 1882, 1883, and 1884, now in the hands of original owners, who have in nowise parted with their right of ownership or pledged the same, as may be found to be equitably due by said board for services rendered, labor performed or materials furnished by authority of said board.

Sec. 3. Be it further resolved, etc., That all electors voting at said election for said amendment shall place upon their ballots the words, "For the City of New Orleans debt amendment;" and all electors voting at said election against said amendment shall place on their ballots, "Against the City of New Orleans debt amendment."

AN ACT

To carry into effect the Constitutional Amendment passed at the present session of the Legislature, relative to the bond debt of the City of New Orleans, and to authorize and direct the said City to issue through the Board of Liquidation of the city debt, 4 per cent. bonds to be known as the Constitutional Bonds of the City of New Orleans, payable fifty years from date; and to direct the retirement of the now outstanding bond debt of said City, premium bonds excepted, by the sale of said Constitutional Bonds and application of proceeds by the Board of Liquidation to the payment of said outstanding bonds, premium bonds excepted, and to the payment also of certain judgments against the City on floating debt claims created prior to 1879, and to authorize the purchase by said board, of said outstanding bonds, other than premium bonds, or the exchange thereof for said Constitutional Bonds, and for the payment of said Constitutional Bonds, and of the aforesaid outstanding bonds, not retired under this act, and for the payment of the annual allotment of premium bonds and premiums; to direct the levy and collection by the City of the tax of 1 per cent. now levied for the bond debt, and to direct the payment to and application by the Board of Liquidation of said taxes, to the purposes aforesaid for which it is levied, and

to provide a sinking fund for said Constitutional Bonds; and for the disposition of the surplus of said tax not required for the aforesaid bond debt, and to recognize said tax as the contract right of the holders of the aforesaid bonds, and to recognize also the exemption of said Constitutional Bonds from all taxation, and to define the functions and powers of said Board of Liquidation.

Whereas, Due notice of intention to apply for the passage of this act having been advertised, as required by Article 48 of the Constitution:

Sec. 1. Be it enacted by the General Assembly of the State of Louisiana, That, in order to provide for the retirement of the outstanding bond indebtedness of the City of New Orleans, and such other indebtedness as under existing laws, is or becomes entitled to be funded into any series of bonds, always saving and excepting, however, the bonds known as premium bonds, the City of New Orleans is authorized, empowered, and directed to issue bonds to the amount of ten million of dollars: nine thousand of which bonds shall be for one thousand dollars each, and two thousand of which shall be for five hundred dollars each, to be known as the "Constitutional Bonds of the City of New Orleans," dated July 1st, 1892, payable fifty years after date, with the right to call by lot not more than seven hundred thousand dollars per annum after the year 1925, bearing four per cent. per annum interest, payable semi-annually and represented by interest coupons attached thereto.

Said bonds shall be numbered, those of one thousand from one to nine thousand, and those of ($500) five hundred each from one to two thousand (2000), and shall be signed by the Mayor and Comptroller of the City of New Orleans, and delivered to the Board of Liquidation of the City Debt, to be used for the purposes aforesaid in accordance with the provisions of this act.

Each of said bonds shall, at the time of its issuance by the said Board of Liquidation and not at any time anterior thereto, be countersigned by the president and secretary

of said board; and a daily report shall be made to the Mayor by said secretary of the number of the bonds so countersigned and delivered, and the purpose for which they were issued.

These daily reports shall be laid before the City Council by the Mayor; and the finance committee of said council is required to examine and verify said reports at least once a month, and to report the results of their examination and verification to the council.

Sec. 2. Be it further enacted, etc., That the Board of Liquidation is hereby authorized and empowered to sell and dispose of such amounts of said Constitutional Bonds as may be deemed requisite for the purposes hereinafter expressed, the sales of bonds to be made on sealed proposals or bids to purchase to be invited by advertisements published at least five times during the period of thirty days, in one or more newspapers in the City of New Orleans and the City of New York, and no sale to be made before said delay and advertisement, the bonds to be sold to the highest bidder if the bid is deemed acceptable, but the board is to have the right to reject all bids, the bonds to be sold at the highest premium obtainable, and no sale shall be made at less than par.

Said advertisements shall provide that all accepted sales shall be consummated by the payment of the price bid, and the delivery of the bonds purchased at least three days before the date of the maturity or the call date of the bonds that are proposed to be purchased with the funds derived from the sales; where bonds are sold to pay judgments, as hereinafter provided, the advertisements shall provide for the payment of the price, and the delivery of the bonds on a fixed day, and all past due interest coupons on the bonds sold shall be cut off and cancelled before delivery to the purchasers, and provided no sale of said constitutional bonds shall be made more than thirty days in advance of the period when the funds are needed for the payment or purchase of bonds.

Sec. 3. Be it further enacted, etc., that all funds received by the Board of Liquidation from the sale of Constitu-

tional Bonds, shall be immediately deposited with the fiscal agent of the City of New Orleans, or if the fiscal agent is not satisfactory in the opinion of the Board, with a chartered depositary selected by the Board, to the credit of a special fund called the "Bond Sales Fund," which said fund shall be used solely and exclusively for the purpose of retiring by payment all the said now outstanding valid bonds of the City of New Orleans matured or subject to be called, including the certificates or bonds issued under the fourth section of the Act No. 58 of 1882, and including judgments now or hereafter rendered on floating debt claims prior to 1879, entitled to be funded under Act No. 67 of 1884, but excluding premium bonds issued under the Act No. 31 of 1876, not to be retired under this act, and the interest upon all said bonds subject to call, shall cease after publication of the call, as now provided by existing laws; no check shall be honored on said fund unless accompanied by a certificate signed by the president and secretary of said board, describing the bonds it is intended to retire, and certifying that said bonds have been surrendered to said board and cancelled, or describing the judgments to be paid and annexing a certificate of its satisfaction.

Sec. 4. Be it further enacted, etc., That after the payment of all aforesaid outstanding bonds subject to call or matured, as provided in section 3 of this act, the Board of Liquidation with the fund derived from the sale of Constitutional bonds, shall have the power to purchase the unmatured outstanding bonds of the City, premium bonds always excepted, and to this end, the board by advertisement published once a week in one or more newspapers in the City of New Orleans and the City of New York for the space of thirty days, shall invite sealed proposals from the holders to sell said outstanding bonds, and the board is authorized if deemed judicious to purchase said outstanding bonds at the lowest price named in the proposals, but it is to be under no obligation to accept, but may in its discretion reject any and all proposals; no purchase of outstanding bonds shall ever be made with-

out the assent of the City Council, and in case of said purchase, the check for the purchase price of the bonds shall be accompanied by a certificate signed by the president and secretary of said board, describing the bonds purchased and certifying that the bonds have been surrendered and cancelled, and provided further, that no purchase of said outstanding bonds shall be made at any price higher than the face of the bond with accrued interest.

Sec. 5. Be it further enacted, etc., That after the payment of all the aforesaid outstanding bonds, subject to call or matured, as provided in Sec. 3 of this act, the board is hereby authorized and empowered to exchange for the valid outstanding bonds of the City of New Orleans, save and except premium bonds, such an amount of the Constitutional Bonds as may be requisite for the purpose of said exchange, said exchange of the Constitutional Bonds issued under this act for said bonds surrendered in exchange to be made on the terms and conditions as follows: The board, by advertisement inserted in one or more newspapers in the City of New Orleans and City of New York, to be published three or four times for and during the space of thirty days, shall invite proposals to exchange said outstanding bonds for the Constitutional Bonds authorized by this act; the board shall be under no obligation whatever to accept any bid or proposal, but in its discretion is hereby authorized and empowered only if it sees fit to exchange said Constitutional Bonds at the lowest price or rates of exchange specified in the said bid or proposals for said bonds surrendered in exchange; provided, however, the board shall use its best efforts to secure as high a premium as possible for the said Constitutional Bonds, and in no case shall said Constitutional Bonds be exchanged at any rate less than the par thereof, and provided further, that no exchange shall be made for the said bonds surrendered and exchanged at any rate higher than their par with accrued interest, and provided further, that a proces verbal shall be prepared and put on file by the board of the numbers and amounts of the bonds surrendered in exchange and at the rate at which they were surrendered and of the numbers and amounts of the

Constitutional Bonds issued in exchange, and the rate at which they were issued, stating also the date of the exchange, and provided further, that no exchange shall ever be made without the previous assent of the City Council.

Sec. 6. Be it further enacted, etc., That all bonds retired under provisions of this act shall be immediately cancelled by perforating the same and the attached coupons; and such cancelled bonds and coupons shall not be destroyed, but shall be kept by said board as vouchers, and shall be pasted in the bond books, in accordance with the system, and for many years past in vogue in the conduct of the business by said board.

The same method shall be pursued with reference to all bonds and coupons retired with the sinking fund herein provided, and all coupons paid year by year.

Sec. 7. Be it further enacted, etc., That in order to provide for the payment of the principal and interest of the Constitutional Bonds, herein authorized to be issued, and of all other outstanding valid bonds of the City of New Orleans, it shall be the duty of the council and the proper officers of the City of New Orleans to levy, for the year 1892, and annually thereafter, until the principal and interest of the bonds, herein provided to be issued, are fully paid, a special ad valorem tax of one per cent. upon all the taxable property, real, personal and mixed, in the City of New Orleans; said special tax to be a part of and not in addition to the tax of twenty mills and two-tenths of a mill on the dollar of valuation now levied for all purposes by the City of New Orleans. The proceeds of said special tax shall be paid over to the fiscal agent or depository of the Board of Liquidation, to the credit of said board, day by day, as the same is collected by the proper officials of said City; and neither the said City, nor its officers, shall have the custody, control, disposition or expenditure of said tax, or any part thereof, except as herein provided. In case the said City, at any time, shall fail or neglect to levy and collect said special tax, or in case the municipal government of the City should be abolished, or in case present territory of the City of New Orleans should be

transferred to other municipal corporations, and no proper and efficient provision is made by law to compel those municipal governments to levy and collect said special annual tax of one per cent.; or, in case said municipal corporations refuse or neglect to exercise to this end a proper and efficient taxing power bestowed upon them, then, in any of these events, the said Board of Liquidation shall itself, by proper resolution, have power to levy said tax, and to collect the same; and, in said levy and collection, to use any and all the machinery, rights, powers and authority established by the State for the levy and collection of the State taxes; and in case it should become necessary under the abovementioned or similar circumstances, for the said Board of Liquidation to levy and collect said tax, and said board should refuse or neglect to do so, any court of competent jurisdiction shall, on application of any bondholder, have power to decree the levy of said special tax throughout the said territory, and to have the same collected by the sheriff, or executive officer of the court, and the proceeds applied to the payment of the interest and principal of the said bonds. In case any such decree is entered, the sheriff or executive officer of the court shall have all the powers, rights and authority granted by law by the State to her own tax collectors.

Sec. 8. Be it further enacted, etc., that out of the proceeds of said one per cent. per annum tax, beginning in the year 1892, the said Board of Liquidation shall annually provide for the carrying on of the premium bond plan, the payment of the interest upon the bonds herein authorized to be issued, and of the interest upon all other outstanding interest bearing bonds of the City of New Orleans, and after the year 1925, for the annual sinking fund necessary to call and retire the number of bonds provided for in section 9 of this act. After making, in each year, the provisions above required, and after deducting the expenses incurred by the said board, and after paying any deficiency in the interest fund of any previous years, one-half of the surplus of said tax shall be passed to the credit of a special fund, to be known as the "Per-

manent Public Improvement Fund," to be disposed of as hereinafter provided; the other half of said surplus shall be paid over to the School Board of the City of New Orleans, in addition to any fund appropriated by said City out of other funds, to be used in the maintenance and support of the public schools in said City.

Sec. 9. Be it further enacted, etc., That, commencing with the year 1926, five hundred thousand dollars of Constitutional Bonds shall be annually called and retired by said board in the manner herein provided, with funds derived from the proceeds of said tax of one per cent.; and commencing with the year 1937, seven hundred thousand dollars of said Constitutional Bonds shall be annually called and retired, in the manner herein provided, with said funds. In order to determine each year what bonds shall be called and retired, the number of all outstanding bonds shall be placed in a wheel on the first Monday of July of each year, commencing with the year 1926, and five hundred numbers, or seven hundred numbers, as the case may be, shall be drawn out, two numbers of the five hundred dollar bonds counting as one. The numbers of the bonds so drawn shall be published in New York and New Orleans for thirty days, together with a notice that said bonds must be presented for payment on the ensuing first of January; and after that date all interest will stop on said bonds. All bonds so paid shall be cancelled as soon as delivered to said board in the manner specified in section 6 of this act, and detailed report thereof made by the secretary of the board to the Mayor, who shall lay the same before the council for examination and verification by the Finance Committee thereof.

Sec. 10. Be it further enacted etc., That the "Permanent Public Improvement Fund," above provided for, shall be used exclusively for the construction of permanent public improvements in the City of New Orleans, such as levees, canals, drainage stations, pavements, public buildings, public parks, and bridges, and all ordinances passed by the City Council to be paid out of this fund, shall first be approved by the said Board of Liquidation, who shall

not draw any check on said fund, unless they are convinced, upon proper inquiry, that said ordinance covers the construction of a permanent public improvement, within the purview of this act. The true interest and meaning of this clause is not to give said board any authority to say to what permanent public improvement any fund shall be applied, but only to see that said funds shall be applied exclusively to the construction of improvements that are permanent.

Sec. 11. Be it further enacted, etc., That the Board of Liquidation of the City Debt, established by Act No. 133, of the Acts of 1880, as now constituted, is hereby created a a body corporate, with right of existence and succession until January 1st, 1943, with power to sue and be sued, to have a corporate seal, to make reasonable rules and regulations for the conduct of its business, and to employ counsel and a reasonable clerical force. None of its members shall receive any compensation for his services. One of its members shall be elected President, and another Vice President, who shall act in the absence or disability of the President. They shall select a Secretary (not a member of the board), who shall give bond for the faithful performance of his duties in the sum of twenty thousand dollars ($20,000), and this bond shall be renewed every three years. He shall receive a salary, to be fixed by the board, not to exceed thirty-five hundred dollars ($3500) per annum, and shall hold his office at the pleasure of the board. Their funds shall be deposited with the fiscal agent of the City of New Orleans, or with some chartered bank in the City of New Orleans selected by the board. The City of New Orleans shall provide, in the City Hall or elsewhere, proper offices and quarters for said board, and its officers, books, records and archives. The clerical office expenses, counsel fees, and the cost of all printing and engraving bonds under this act shall be paid from said tax fund. On the first of January and July of each year, said board shall make, in printed form, to the City Council, a detailed report of all its receipts and all its expenditures, and of its transactions and doings under the provisions of this act, with the names

of all its employees, and the amount of compensation paid to each. Nothing in this act contained shall be construed to affect or change in any manner the duties, powers and functions of the Board of Liquidation under existing laws, not inconsistent with this act, or the rights of said board to the assets and property of the City not dedicated to public use, including the uncollected taxes prior to 1879; but said duties, functions, rights and powers are maintained and confirmed in full force.

Sec. 12. Be it further enacted, etc., That any member of said Board of Liquidation who removes his domicile from the City of New Orleans, or who is convicted of any crime against the State, or who is declared insolvent or bankrupt, or who becomes incapacitated to perform his duties, shall forfeit his membership, and it shall be the duty of said board to declare his membership vacant, and to elect his successor. Any member may be removed by a two-third vote of the whole board, for misfeasance, malfeasance in office, or for neglect of his duties as a member; or he may be removed on similar grounds by any court of competent jurisdiction at the suit of any bondholder, or ten taxpayers.

Sec. 13. Be it further enacted, etc., That in case all, or the majority of the members of said board, should, for any reason become vacant, so as to prevent a quorum of said board, any court of competent jurisdiction shall have power and authority, on the application of holders of at least ten thousand dollars ($10,000) of said Constitutional Bonds, to be had contradictorily with the City of New Orleans and the surviving members of the board, if there be any, to fill enough of said vacancies to constitute a quorum, and the quorum so obtained shall fill the remainder of the vacancies.

Sec. 14. Be it further enacted, etc., That said board shall have power, with the concurrence of the City Council, to make and publish reasonable and proper rules for the registry of the bonds to be issued under this act.

Sec. 15. Be it further enacted, etc., That said Constitutional Bonds shall be exempt from all taxation, State, parish and municipal.

Sec. 16. Be it further enacted, etc., That all of the substantial provisions of this act are hereby declared to be a contract between the State of Louisiana, the City of New Orleans, the taxpayers of said City and each and every holder of said Constitutional bonds.

Sec. 17. Be it further enacted, etc., That the Board of Liquidation shall immediately cease extending outstanding bonds under the Act No. 58 of 1882.

Sec. 18. Be it further enacted, etc., That nothing in this act contained shall be construed to affect or disturb, in any manner, the existing right to the tax now levied for premium bonds and for said outstanding bonds, not retired, said tax being preserved in full force, and the payment of the allotments of premium bonds and premiums extant in the hands of holders, and of the interest and principal at maturity of all outstanding bonds that may not be retired under this act shall continue as now directed under existing laws; said tax of 1 per cent. being levied for premium bonds and outstanding bonds, not retired, as well as for the aforesaid constitutional bonds substituted for the outstanding bonds paid, purchased or retired by exchanges under this act.

Sec. 19. Be it further enacted, etc., That the general provisions of this act shall not take effect until the adoption of the aforesaid constitutional amendment; provided, however, that portion of the act prohibiting the further extension of bonds, under the Act No. 58 of 1882 shall go into effect immediately, and all the laws contrary to or inconsistent herewith be and the same are hereby repealed.

S. P. HENRY,
Speaker of the House of Representatives.

JAS. JEFFRIES,
Lieut. Governor and President of the Senate.

Approved July 8th, 1890.

FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

A true copy from the original:

L. F. MASON,
Secretary of State.

No. 133.] AN ACT

To liquidate the indebtedness of the City of New Orleans, and to apply its assets to the satisfaction thereof; to create a board of liquidation, and prescribe their duties; and to provide for a fiscal agent and for the levying of a sufficient tax to pay said interest.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That for the purpose of liquidating, reducing, and consolidating the debt of the City of New Orleans, as hereinafter specified, a permanent syndicate of six citizens of the said City is hereby created. The said syndicate shall be chosen as follows: two by the Governor of the State of Louisiana, two by the Lieutenant Governor, and two by the Speaker of the House of Representatives, and the Mayor of the City of New Orleans, the Treasurer and the Comptroller thereof, as hereinafter provided, shall be *ex-officio* members of said syndicate; provided, that in case no change is made in the present City government, the present commissioners of the same consolidated debt, shall act as *ex-officio* members of said syndicate, and the members of the syndicate so named shall fill all vacancies in their number from death, resignation or otherwise.

Sec. 2. Be it further enacted, etc., That the commissioners of the consolidated debt, or the City officers provided and named in Section one of this act, and the syndicate hereby created, shall constitute a board of liquidation of the City debt, and the said board shall have exclusive control and direction of all matters relating to the bonded debt of the City of New Orleans. The board of liquidation shall cause to be prepared bonds of the City of New Orleans, which bonds shall be used only for the purpose of negotiation or of exchange, as hereafter provided. The said bonds shall be signed by the Mayor and countersigned by the Administrators of Accounts and of Finance, or such officer or officers as may be hereafter created to fill their respective functions. They shall be made payable in fifty years from the day of the approval of this act, and bear interest at the rate of four per cent. per annum, from the date of said bonds, payable semi-an-

nually, on the first day of April and October of each year, said interest represented by one hundred coupons annexed to each bond. The said bonds and interest coupons annexed may be issued for such sums as may be deemed most convenient by the Board of Liquidation, and be made payable at such place or places as may be designated in the bond; but the said bonds shall be made payable, interest and principal, in lawful money of the United States; and the said Board of Liquidation shall be, and is hereby, empowered and authorized to establish in New York, London, Paris and Amsterdam, such agencies as they may see fit and desirable.

Sec. 3. Be it further enacted, etc., That the Board of Liquidation of the City debt be, and it is hereby, authorized and empowered to retire and cancel the entire valid debt of the City of New Orleans, except the floating debt created up to the date of the passage of this act, whether represented by bonds of various classes or by judgments, either by the sale of the new bonds created under this act and appliance of proceeds to the purchase of such old obligations, or by exchange of the new bonds against said old obligations, on such terms as may be agreed upon between the holders of the said old obligations and the Board of Liquidation; provided, the new bonds shall not be sold for a less sum than eighty cents, in cash, on the dollar, and that no exchange shall be made at a greater rate than fifty cents in new bonds per one dollar of the face value of the old obligations with interest accrued thereon; and provided, further, that the entire issue of new bonds sold or exchanged, as above provided, shall not exceed in all ten millions of dollars.

Sec. 4. Be it further enacted, etc., That should any obligation of the City of New Orleans be deemed fraudulent or invalid, by any member of the Board of Liquidation, the same shall not be purchased, exchanged or retired until the holder of the same shall have applied to the proper Court for relief, when, if final judgment be in his favor, it shall be deemed to be a valid obligation of the City; and should any member of the board of liquidation knowingly audit, fund, purchase,

or retire, for value, any illegal obligation of the City of New Orleans, or shall use any of the bonds herein authorized, or the proceeds thereof, or any of the City assets or property in the hands of the board, by virtue of this act, for purposes other than those contemplated in this act, he shall, on conviction thereof, be punished by fine of not less than one thousand dollars and imprisonment at hard labor for not less than one year.

Sec. 5. Be it further enacted, etc., That it shall be the duty of the City authorities, as soon as possible after the organization of the board of liquidation of the city debt, to turn over and transfer to the said board all the property of the City of New Orleans, both real and personal, not dedicated to public use, and the board of liquidation shall be and is hereby empowered and authorized to dispose of said property on such terms and conditions as may be deemed favorable; the proceeds of such sale or sales to be deposited with the fiscal agent of the board at credit of "city debt fund."

Sec. 6. Be it further enacted, etc., That nothing in this act shall be construed as affecting, or in any manner impairing, the Act 31 of 1876, commonly known as the "Premium Bond Act," but it will be the duty of the city authorities to turn over and transfer to the board of liquidation of the city debt all moneys collected on account of the tax levied in accordance with the provisions of the premium bond act; and it shall be the duty of the board of liquidation to apportion the proceeds of said tax, and apply the same *pro rata* and in the proportion which each form of bonded debt shall bear to the entire amount of the city's debt; and such portions of the said proceeds of tax as shall not properly belong to the outstanding amount of premium bonds shall be applied to the payment of interest on the bonds created under this act.

Sec. 7. Be it further enacted, etc., That it is hereby made a felony punishable, on conviction, by fine not exceeding five hundred dollars and imprisonment at hard labor not exceeding ten years, for the fiscal agent or any member of the board of liquidation of the city debt to

divert or misappropriate any portion of the debt and interest fund herein created from its legitimate channel, as provided.

Sec. 8. Be it further enacted, etc., That the surplus arising from the collection of the debt and interest tax, or from the sale of assets in the hands of the board of liquidation of the city debt, after paying the interest coupons of the bonds issued under this act, shall be used for the purchase and retirement of any valid bonds of the City of New Orleans heretofore created at the rate not exceeding fifty cents per dollar, or, at the discretion of the board, for the retirement of the bonds created under this act at a price not exceeding par; and the bonds or obligations purchased, exchanged or retired, shall be cancelled and destroyed by the said board of liquidation, after public notice of the same shall have been given in the official journal of the city of New Orleans, and in the presence of such withesses as may desire to attend. A *proces verbal* of the same, giving the amounts, numbers, dates, and other particulars, for the identification of the obligations destroyed, shall be made out and sworn to by a majority of the board of liquidation, and published within ten days of such destruction in the official journal of the City of New Orleans.

Sec. 9. Be it further enacted, etc., That the board of liquidation is required and empowered to open, keep, and regulate a special book of registry of bonds of the consolidated bonds series of 1880, as follows, to-wit.: Any holder or owner of any of the former or old bonds of the City, issued previous to the passage of this act, upon surrendering the same for cancelment, according to the provisions of this act, shall be entitled to have the amount and number of bonds due him registered in said book, in such manner and form as the board of liquidation shall determine and prescribe, whereupon, instead of giving to said party a new bond, as contemplated by the preceding sections of this act, the Board of Liquidation shall grant to each party a certificate of registry, in such form as said Board of Liquidation may determine and prescribe, and said certificate to be transferable, in person or by proxy,

on the records of the books of the Board of Liquidation, and the semi-annual interest on the amount of said certificates, instead of being represented by interest coupons, shall be payable to such party or his order in such form and manner as said Board of Liquidation may determine and prescribe; and the City of New Orleans shall cause a sufficient number of blank certificates of registry to be printed or engraved in the form and manner prescribed, and shall deliver said blanks to the Board of Liquidation, to be used agreeably to this section.

Sec. 10. Be it further enacted, etc., That it shall be the duty of the Council of New Orleans to provide a proper office for the Board of Liquidation of the city debt; but the expense of engraving, printing and issuing the bonds created under this act, and all the necessary clerical and office expenses, shall be paid out of the funds appropriated and belonging to the payment of interest and principal of the said bonds; provided, that no member of the Board of Liquidation shall receive any salary or emolument of any kind for his services therein.

Sec. 11. Be it further enacted, etc., That the City Council be and is hereby required to levy an annual tax, calculated upon the assessment of the preceding year, less 20 per cent., sufficient to pay in full the interest on all the bonds issued under the provisions of this act, and any tax levied shall continue in force until superseded by a new levy for the same purpose.

Section 12. Be it further enacted, etc., That all parts of all laws in conflict with this act, be and the same are hereby repealed.

(Signed) R. N. Ogden,
Speaker of the House of Representatives.
S. D. McEnery,
Lieutenant Governor and President of the Senate.

Approved April 10, 1880.

Louis A. Wiltz,
Governor of the State of Louisiana.

A true copy:
Will A. Strong, Secretary of State.

Supreme Court of the United States.

Nos. 114 and 119.—October Term, 1900.

The Board of Liquidation of the City Debt, Plaintiff in Error, 114 *vs.* The State of Louisiana on the relation of Lucretia B. Wilder et al.	In error to the Supreme Court of the State of Louisiana.
The Drainage Commission of New Orleans, Plaintiff in Error, 119 *vs.* Lucretia B. Wilder et al.	

[January 7, 1901.]

In 1890 the legislature of Louisiana enacted a law for the refunding or retirement of certain outstanding debts of the city of New Orleans, and for the further carrying out of a plan, relating to a portion of the city debt, known as the Premium Bond Plan. The act specified the debts to to be refunded or retired, and provided moreover substantially as follows:

The Board of Liquidation of the City Debt, which we shall hereafter refer to as the Board of Liquidation, which had been created by previous laws, in addition to the powers which it already possessed was made a corporation and was authorized to execute the refunding law. The city was directed to deliver to the Board of Liquidation municipal bonds not exceeding in amount ten millions of dollars, the series to be known as the "Constitutional Bonds of the City of New Orleans.". The Board of Liquidation was directed to countersign and issue as many of these bonds as might be required for the refunding or retiring operations. To pay the interest on the bonds and to provide for a sinking fund, which the law directed should be accumulated, as well as for the execution of its other provisions, a special *ad valorem* tax of one per cent. was directed to be levied by the municipality annually, upon all the taxable property within the city of New Orleans until "the principal and interest of the bonds herein provided to be issued are fully paid." The proceeds of this tax were directed to be paid over to the Board of Liquidation day by day as collected, and the city was deprived of all control over or custody of the avails of the tax, the disbursement thereof being solely vested in the Board of Liquidation subject to its duty to account to the city for the expenditure. It was recited (sec. 16) "that all of the substantial

provisions of this act are hereby declared to be a contract between the State of Louisiana, the city of New Orleans, the taxpayers of said city, and each and every holder of the said constitutional bonds." The law, (sec. 8,) after limiting the purposes to which the funds arising from the one per cent. tax should be primarily disbursed by the Board of Liquidation, contained the following:

"After making, in each year, the provisions above required, and after deducting the expenses incurred by such board, and after paying any deficiency in the interest fund of any previous year, one-half of the surplus of said tax shall be passed to the credit of a special fund, to be known as the 'permanent public improvement fund,' to be disposed of as hereinafter provided. The other half of said surplus shall be paid over to the school board of the city of New Orleans, in addition to any fund appropriated by said city out of other funds, to be used in the maintenance and support of the public schools in said city."

It was further provided (sec. 10):

"That, the permanent public improvement fund, above provided for, shall be used exclusively for the construction of permanent public improvements in the city of New Orleans, such as levees, canals, drainage stations, pavements, public buildings, public parks and bridges, and an ordinance passed by the said council to be paid out of this fund, shall first be approved by said Board of Liquidation, who shall not draw any check on said fund unless they are convinced, upon proper inquiry, that said ordinance covers the construction of a permanent public improvement within the purview of this act. The true intent and meaning of this clause is not to give said board any authority to say to what permanent public improvement any fund shall be applied, but only to see that said funds shall be applied exclusively to the construction of improvements that are permanent."

The constitution of the State of Louisiana, at the time the foregoing law was passed, contained restrictions upon the authority both of the legislature and the city of New Orleans, with which many of the provisions of the refunding law were in conflict. It was consequently provided that the main provisions of the law should not go into effect until they were ratified by the adoption of a constitutional amendment, which was submitted by an act passed at the same session at which the refunding law was adopted. This amendment to the constitution was ratified at a general election in 1892. The amendment to the constitution, however, was not solely confined to an approval of the refunding act, but contained a provision empowering the city of New Orleans "to examine into and assume the payment of the claims or obligations of the board of school directors for the city and parish of Orleans due for the years 1880, 1881, 1882, 1883 and 1884, now in the hands of original owners, who have in nowise parted with their rights of ownership, or pledged the same, as may be found to be equitably due by said board for services rendered, labor

performed or materials furnished by authority of said board." The power of the city to exercise the discretion thus conferred depended upon the adoption of the amendment to the constitution because the school board was a distinct corporation from the city of New Orleans, and its debts were not debts of the city; and without the amendment the legislature could not have empowered the city to assume to pay a sum which it did not owe, because the amount was solely due by another and distinct corporation.

After the adoption of the amendment the city of New Orleans contracted for various works of public improvement, and the cost of these works, it was either expressly or impliedly agreed, should be paid out of the permanent public improvement fund, to arise from one-half the surplus of the one per cent. tax, as provided in the amendment of 1892 and the refunding law.

In July, 1895, a plan for the drainage of the city of New Orleans was devised by the municipality. In 1896 a law was enacted creating the Drainage Commission of New Orleans, with authority to execute the aforestated plan of drainage, with such modifications as might be deemed necessary for its successful accomplishment. The law provided (sec. 6) in order "to raise funds for the purpose of doing such work speedily and on an extensive scale, said Drainage Commission of New Orleans shall have power to issue and dispose of its negotiable bonds to an amount not exceeding five millions of dollars. . . . All moneys and funds dedicated and applied by this act to the purposes thereof are consecrated to the payment of the principal and interest on said bonds." The funds thus referred to were enumerated in the act (sec. 3) and consisted of the moneys in the hands of the Board of Liquidation derived from one-half the surplus of the one per cent. tax levied after January 1, 1898. In other words, as the city had prior to 1896 contracted for public improvements payable out of the surplus, so much of the surplus fund as accrued from taxes levied prior to January 1, 1898, was not transferred to the Drainage Commission, but was left to be applied to the discharge of the sum due on the contracts which the city had theretofore made on the faith of the surplus fund. In addition, the act also "dedicated and applied" to the purposes of the Drainage Commission "all moneys and funds now under the control of the city of New Orleans, and hereafter to be received, arising from the sale of street railroad franchises and other franchises." In 1898 the law just referred to was amended in various particulars, one of these amendments reducing the amount of bonds which the Drainage Commission was authorized to issue from five millions to fifteen hundred thousand dollars.

The Board of Liquidation received from the city of New Orleans the series of ten millions of constitutional bonds and sold or otherwise issued

$8,998,500 thereof, leaving in its hands bonds amounting to $1,001,500. There yet remained, however, certain outstanding debts subject to be refunded or retired, amounting to about $137,050.

The Drainage Commission, as it was authorized to do, caused to be prepared fifteen hundred bonds of $1,000 each. Five hundred of these bonds were sold in June, 1898, realizing $505,238. There was paid over to the commission the proceeds of the sale of certain street railroad franchises, amounting to $579,582.12. Between May, 1897, and the 12th of May, 1898, the commission made contracts for the work of draining the city to the amount of $1,834,465.35, and prior to May 12, 1898, had paid on account of these contracts, as the work progressed, $797,363.06, leaving due the sum of $1,037,102.29, which was payable as the work proceeded.

In 1896 a convention to frame a new constitution for the State of Louisiana was assembled, and the instrument which that body adopted was, subsequent to May 12, 1898, declared to be the constitution of the State without submitting the provisions thereof for ratification by a vote of the people. By article 314 of this constitution the constitutional amendment adopted at the election of 1892, relating to the retirement or the refunding of the city debt, was reiterated. The discretion, however, which had been conferred upon the municipal government of the city of New Orleans by the constitutional amendment of 1892, to assume payment of certain claims against the school board, apparently not having been availed of, article 315 of the new constitution imposed a positive duty on the city to examine specified debts due by the school board, and to issue certificates of indebtedness to the amount found to be due. These debts the constitution provided for in article 317, as follows: "The funds requisite to pay said claims shall be provided by said Board of Liquidation, by the sale of a sufficient number of the constitutional bonds of the city of New Orleans of the issue provided for by act number 110 of the general assembly for the year 1890, and by the amendment to the constitution of the State submitted to the people by said act and adopted at the general election in 1892."

The city of New Orleans ascertained the amount of the claims to be $115,558.33, and issued certificates as required by the constitution. The Board of Liquidation, refusing to sell bonds for the payment of the certificates, proceedings by mandamus to compel it to do so were commenced. The return of the Board of Liquidation to the alternative rule for mandamus denied the right of the relators to the relief by them prayed, for various reasons based upon purely local and non-Federal contentions, to which we need not refer. The return thereupon specially set up and claimed that the carrying out of article 317 of the new constitution, by selling any of the constitutional bonds to provide the funds to pay the debt of the relators, would bring about an impairment of the obligations

of certain contracts, and therefore would cause the article of the constitution to be repugnant to section 10, article I, of the Constitution of the United States. The return besides alleged that the sale of the bonds, as required, would deprive the contract creditors of their property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States. The grounds upon which the protection of the Constitution of the United States was invoked were stated in the return with much elaboration; all the averments on this subject, however, are reducible to the following:

First. That under the powers conferred upon it the respondent board was qualified in every respect to enforce the rights of all the bondholders and of each and every person having a contract claim to any portion of the one per cent. tax.

Second. That as the refunding law and the amendment to the constitution of 1892 had authorized a series of constitutional bonds to be issued solely for certain specified debts, the sale of any such bonds, as required by the provision of the new constitution, to pay debts other than those originally contemplated, would impair the obligations of the contracts which had arisen from the refunding law and amendment of 1892 in favor of those to whom the constitutional bonds had already been issued, and would also impair the obligation of the contract in favor of the premium bondholders and other creditors who had not exchanged their claims for bonds of the constitutional series.

Third. That as the surplus of the one per cent. tax had been directed to be applied, one-half to the school board and the other half to a permanent public improvement fund, the issue of bonds payable out of the one per cent. tax for any other debts than those originally contemplated would necessarily, to the extent of such issue, increase the payments to be made out of the one per cent. tax, and therefore diminish the sum of the surplus. That this decrease in the amount of the surplus would impair the obligations of the contracts existing in favor of the following classes of creditors: First, those who had contracted with the city to execute certain works of public improvement on the faith of the surplus. Second, those bondholders who had taken the five hundred thousand dollars of bonds issued by the Drainage Commission upon the faith of the surplus fund. Third, those who had contracted with the Drainage Commission in reliance upon the surplus fund. The return in addition alleged that the sale of the bonds as prayed would injuriously affect the sale by the Drainage Commission of the million dollars bonds which that board had not yet disposed of, and therefore would further impair the obligation of the contracts existing in favor of all the creditors of the Drainage Commission, as such creditors had contracted with the commission upon the faith of the undiminished and unimpaired power to sell the

bonds as originally provided for. It was besides alleged that as one-half of the surplus had been consecrated to the school board, the diminution of the surplus which would be occasioned by the sale of bonds for any other debts than those originally provided for would impair the obligations of the contract which had been engendered in favor of the school board as the result of the provision dedicating the one-half of that surplus to that board.

The Drainage Commission intervened in the cause, and after asserting its right to protect its own interest so far as the further issue of bonds was concerned, and to champion the interest of those to whom bonds had been issued and with whom contracts had been made, specifically charged that the provision of the new constitution was in violation of the contract clause of the Constitution of the United States and the Fourteenth Amendment upon grounds substantially identical with those which had been alleged in the return of the Board of Liquidation.

After hearing, the trial court dismissed the intervention of the Drainage Commission, because it concluded that the commission had no capacity to stand in judgment for the purpose of protecting either its own right to further issue bonds or in order to protect the rights of the holders of drainage bonds already issued, and those who had contracted to do the drainage work. On the merits, the trial court held that the return made by the Board of Liquidation was insufficient, and it therefore allowed a peremptory mandamus commanding the Board of Liquidation to sell a sufficient quantity of the constitutional bonds to provide the means for paying the sum of the certificates held by the relators, with five per cent. interest thereon from the date of the application for mandamus. Both the Board of Liquidation and the Drainage Commission prosecuted appeals to the Supreme Court of the State of Louisiana.

That court, in deciding the appeals, delivered an elaborate opinion. After holding that the school board was a distinct corporation from the city of New Orleans, and, therefore, the debts of the school board were not those of the city, the court determined that it was within the power of the constitutional convention to impose the duty on the city of assuming debts of a different corporation. Having reached this conclusion, the court approached the consideration of the power of the convention to direct the Board of Liquidation to sell a sufficient number of constitutional bonds to pay the debt thus assumed. It considered this question, first, from the aspect of the authority of the convention over the Board of Liquidation and the Drainage Commission, without reference to the limitations imposed by the contract clause of the Constitution of the United States, and then passed on the question of contract and its impairment. In the first aspect, it was decided that as the Board of Liquidation and the Drainage Commission were but creatures of the lawmaking power of

the State, both these bodies were subject to and controlled by the imperative command of the constitution. That, albeit by the original act of refunding and the amendment which ratified it, the bonds of the constitutional series were only to be issued for particular classes of debt, a subsequent constitutional requirement that certain of the bonds should be sold to pay another class of debts was paramount, and, therefore, must be obeyed by the Board of Liquidation. It was held that although the Drainage Commission, by the act creating it, was empowered to execute a general plan of drainage for the city of New Orleans, its duty in this regard was subject to future control, and hence that it was within the power of a subsequent legislature to modify or wholly suspend the drainage work by discontinuing the duties of the board, and, *a fortiori*, it was within the power of the constitutional convention to bring about the same result. Having established this premise, the learned court reached the conclusion that, even although the future execution of the drainage work, under the plan originally conceived, might be wholly impeded or seriously diminished by making other charges against the surplus than those originally contemplated, nevertheless it was the duty of the board to comply with the State constitution, because whether or not the drainage work should be continued as first designed was a question of public policy, which the convention had a right to determine.

Whilst laying down the foregoing, when the court considered the question of the alleged impairment of contract rights, it held that the propositions which it had previously announced were all qualified and restrained by the contract clause of the Constitution of the United States, and therefore the provision of the constitution requiring the sale of the bonds to produce the funds to pay the school debt would be relatively void if it conflicted with or impaired the contract rights of the following classes of creditors, viz: The holders of the constitutional and of the premium bonds; those who held debts subject to be funded into constitutional bonds, but who had not yet exercised such right; those who had contracted with the city for works of public improvement on the faith of the surplus; those who held the drainage bonds issued by the Drainage Commission; and finally those who had contracted with that commission prior to the adoption of the constitution.

In coming to consider the question of impairment the court declared that the contract which had arisen with the holders of the constitutional bonds was that no bonds of that series should be issued for any other than the debts specified in the refunding and retiring act and in the constitutional amendment of 1892; that the surplus fund contemplated by the act and the amendment was not simply the surplus arising after applying the one per cent. tax to the payment of a ten million issue of bonds, but was the surplus which might arise from the application of the one per

cent. tax to the payment of such amount of the ten million issue as had been and would be from time to time required in the refunding or retiring of the debts specified in the act and amendment. It was therefore decided that the sale of any bonds of the series for the purpose of paying any other debts than those specified and originally contemplated would impair the obligation of the contract creditors having a right to payment out of the one per cent. tax and of the contract creditors having a right to be paid out of the surplus fund. This impairment, however, it was held could only arise in the event the payment of the bonds provided to be sold to pay the school debts assumed by the city interfered in any way with the funds required to discharge the claims of the contract creditors as above stated. But such interference, the court held, did not and could not arise, inasmuch as the bonds which the constitution provided should be sold would be, when issued by the Board of Liquidation, subordinate to all the contract rights above stated. That is to say, that it was the duty of the Board of Liquidation to sell the bonds, but that when issued they would not be entitled to payment out of either the one per cent. tax or the surplus fund, until all the contract rights had been provided for, as above enumerated. Indeed, it was held that if it was necessary for the Drainage Commission to sell the bonds which it was authorized to issue for the purpose of paying for the work contracted for prior to the adoption of the constitution, that these drainage bonds when thus sold would also be entitled to a priority of application of the surplus of the one per cent. tax before any part thereof could be used to pay the bonds which the Board of Liquidation was directed to sell for the purpose of the retirement of the school certificates.

Whilst it was thus decided that the bonds to be sold for the school purposes would be subordinate to all the contract rights, and therefore, in the nature of things, could not interfere with or impair such contract rights, the bonds in question were yet declared by the court to be entitled to be paid out of any of the surplus fund which might remain after the discharge of the contract claims, with the preference over any rights which might arise from contracts made by the Drainage Commission after the adoption of the new constitution for the further execution of the drainage plan. This being predicated upon the conclusion that the State constitution, whilst it could not impair contract rights, could yet lawfully diminish or change the plan of drainage in so far as its future execution was concerned. In the margin* are excerpts from

*At page 1870 the court said:

"Defendants assume that the mere fact that constitutional bonds should be sold for the purpose of paying the certificates held by relators or should be given in exchange for those certificates, would of necessity entitle the holders of such bonds to prime the holders of permanent bonds, bonds drawn against the 'surplus' of the

the opinion of the Supreme Court of Louisiana, (51 La. An. 1849,) which more elaborately state the conclusions which we have above summarized.

And all the views which the court expounded were based on a ruling by it made that the Board of Liquidation, under the provisions of the statutes of Louisiana, defining the powers of that board, was invested with such a relation to the contract creditors as empowered it to stand in judgment for the purpose of protecting the contracts from impairment, and hence authorized it to plead the defenses which it had asserted in its return to the rule for mandamus. The judgment of the trial court was affirmed.

The Board of Liquidation applied for a rehearing mainly on the ground that although the views expressed in the opinion of the court had fully recognized the rights of the contract creditors, nevertheless the decree had deprived the contract creditors of the protection to which the opinion acknowledged they were entitled under the Constitution of the United States. This was on the assumption that as the decree of the trial court directed the issue of bonds according to the refunding act, and the amendment of 1892, therefore a compliance with its commands would compel the board to sell negotiable bonds undistinguishable from the other bonds of the same series, and hence put those thus sold on exactly the same footing as the bonds previously issued.

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one per cent. tax dedicated to permanent public improvements, and also to necessarily come in on a footing of equality with all the other holders of consolidated bonds, and they maintain, if this be true, the rights of contract creditors under the funding act, would be impaired.

"Relators on the other hand insist that the only portion of the one per cent. tax ever set aside for permanent public improvements was one-half of the surplus produced by the tax which would remain after having retained in the hands of the Board of Liquidation enough to meet the payment in full of a ten million issue of consolidated bonds, and that, therefore, it would be legally immaterial to creditors basing contracts on such surplus, to whom the other portion of the fund would go; it would be enough for them to know it would not go to them, and relators urge that other holders of consolidated bonds would have no ground of complaint; that they should be permitted to share equally with them from the tax fund, as they had accepted their bonds on the expected basis of coming in concurrence with an issue of ten millions of bonds; that they might be interested that the limit as to the amount of the bonds should not be passed, but that they were without legal interest, when the limit should not have been passed, as to who should be the holders of the bonds sharing the fund with them.

"In support of this last position they rely upon the decision of the Supreme Court of the United States in *Board of Liquidation* v. *McComb*, (92 U. S. Reports, 531.) If the collection of the one per cent. tax would suffice to pay each year the holders of consolidated bonds issued in taking up or retiring the bonds and claims such as were provided for by the Act No. 110 of 1890, and the constitutional amendment of 1892, without any conflict with the bonds, ordered to be sold by Article 317 of the Constitution of 1898, the former, of course, would have no cause of complaint, but if from any cause the amount of tax collected would be insuffi-

The Drainage Commission also applied for a rehearing on grounds substantially identical with those urged by the Board of Liquidation, and upon the further contention that an injustice had been done it, since the court although it, in effect, in its opinion, recognized the right of the commission to intervene, had nevertheless affirmed the judgment of the trial court which dismissed the Drainage Commissioners from the cause upon the assumption that it had no capacity to stand in judgment and champion the rights of the creditors. Both the applicants for rehearing complained of the affirmance of the decree below in so far as it directed the payment of interest on the claims of the certificate holders.

The court granted the rehearing to a limited extent, reversed the judgment below in so far as it dismissed the intervention of the Drainage Commission and to the extent that it allowed interest, and in other respects reiterated the affirmance. These writs of error were then prosecuted.

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cient for that purpose, we do not think the holders of these latter bonds could force the former to pro rate with them the amount in hand.

"This condition of things is not existing. It may never arise, and should it arise, the Board of Liquidation would doubtless have taken steps to distinguish bonds issued under Article 317 from those which had been otherwise issued."

Again the court said (Ib. p. 1872):

"There is no constitutional objection to the convention's ordering the Board of Liquidation to sell bonds to take up the relators' certificates, but there would be constitutional objection to be urged if the effect of the issuing of such bonds would be to place the holders thereof on an equality with the holders of bonds issued to take up the bonds and claims provided for as to their funding and payment by Act No. 110 of 1890, Act No. 114 of 1896, and the constitutional amendment of 1892. (*Duperier* v. *Police Jury*, 31 Ann. 710; *Shields* v. *Pipes*, 31 Ann. 765.)"

Yet further, in analyzing the rights of the drainage bondholders and contract creditors, the court said (Ib. p. 1871):

"We do not take the same view that relators do as to what was meant and intended to be conveyed by the 'surplus' referred to by Act 110 of 1890, Act 114 of 1896, and the constitutional amendment of 1892. We think the lawmakers intended that any portion of the one per cent. tax provided for in Act 110, not needed for the payment or retirement of the particular bonds or claims therein specially provided for as to payment or retirement, should constitute the surplus of the tax. That it was not contemplated when these laws were passed, or the amendment of 1892 adopted, that in order to exhaust any portion of the ten millions of dollars originally expected to be needed to pay the existing bonds and the existing claims therein specially enumerated, which might not be necessary for the purpose, new classes of claims should or would be thrown under the provisions of the original funding law.

"We think the 'surplus' was intended to connect at once and follow immediately behind as to its appropriation the amount beyond that actually needed to carry out the plan as originally mapped out and planned. The surplus was provisionally ascertained each year in a manner particularly specified to be readjusted the next

At a previous term of this court motions to dismiss or affirm were made and their consideration was postponed to the hearing on the merits.

Mr. Justice WHITE, after making the foregoing statement of the case, delivered the opinion of the Court.

The motion to dismiss is without colorable support. The contention that as public bodies charged with the performance of ministerial duties, both the Board of Liquidation and the Drainage Commission had not the capacity to plead that the provisions of the State constitution impaired the obligations of contracts in violation of the Constitution of the United States, is foreclosed by the decision of the court below. In that court, as we have said in the statement of the case, the want of capacity in both the bodies to urge the defenses in question was expressly put at issue and was

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in a manner also particularly specified. All the surroundings and circumstances connected with the legislation negative the idea that the surplus mentioned was to be only any surplus over ten millions of dollars which might result from the collection of the one per cent. tax.

"We think the Board of Liquidation, the Drainage Commissioners, and those with whom they contracted were justified in placing that interpretation upon the legislation, and that the contract rights based upon the same should be protected from impairment. The convention, while ordering the payment of the certificates held by the relators, through sales of consolidated bonds, could not confer upon the holders of such bonds rights which in any way would come in competition with the contract rights of creditors existing against the tax at the time of the adoption of the constitution. Though there was no mention in the constitution as to the rank of the bonds which would be issued to take up relators' certificates, that rank resulted from legally existing conditions which could not be constitutionally interfered with."

Summing up its conclusion, the court declared (Ib. p. 1873):

"The consolidated bonds which relators seek to have issued upon their prayer will really be drawn against (when issued) any surplus which will remain of the one per cent. tax after the payment of all the bonds issued and to be issued by the Board of Liquidation, under Act No. 110 of 1890, and the constitutional amendment of 1892, in order to fund and retire and pay the bonds and debts therein specially enumerated, and also the bonds issued and to be issued by the Drainage Commission under the provisions and authority of Act No. 114 of 1896, to pay the contracts existing at the date of the adoption of the constitution, which were entered into upon the faith of the surplus directed to be set aside to the credit of the permanent improvement fund by the Act No. 110 of 1990, Act No. 114 of 1896, and the constitutional amendment of 1892.

"The effect of this will be to subordinate the rights of holders of bonds issued by the Drainage Commission to pay for contracts entered into after the adoption of the constitution of 1898 to those of the holders of consolidated bonds to be issued under the orders of article 317 of the constitution of 1898. This may check and impede the work of public improvement, but it is a matter which we cannot control."

directly passed on, the court holding that under the statutes of the State of Louisiana both the bodies occupied such a fiduciary relation as to empower them to assert that the enforcement of the provisions of the State constitution would impair the obligations of the contracts entered into on the faith of the collection and application of the one per cent. tax and of the surplus arising therefrom. Without implying that the reasoning by which this conclusion was deduced would command our approval were we considering the matter as one of original impression, and without pausing to note the ulterior consequences which may possibly arise from the ruling of the court below on the subject, we adopt and follow it, as the construction put by the Supreme Court of the State of Louisiana on the statutes of that State in a matter of local and non-Federal concern.

Accepting, then, in this regard, the decision of the State court, the proposition now pressed reduces itself to this: Although under the State law both of the bodies in question bore such a relation to the interests involved as to empower them to assert that the contract rights were impaired, nevertheless they do not possess the capacity to prosecute error to a decision if adverse to the contract rights. This, however, is but to say at one and the same time that there was capacity and incapacity to assert and protect the contract rights. The proposition that the judgment of the Supreme Court of the State of Louisiana rests upon an independent non-Federal ground, finds no semblance of support in the record. It is true the court primarily considered the case from the point of view of the duty and rights of the defendant and intervenor as depending on the law of Louisiana irrespective of the contract rights, but these considerations were by the court declared to be merely a prelude to the decision of the fundamental issue, that is, whether, if the relief prayed was allowed there would arise an impairment of the obligations of the contracts as specifically alleged both in the return made by the Board of Liquidation and in the petition of intervention of the Drainage Commission. Indeed, the opinion of the learned court, which we can consider, (*Eagan* v. *Hart*, 165 U. S. 188,) expressly announced that the defenses asserted under the contract clause of the Constitution of the United States were the real issues and were essentially necessary to be decided in order to dispose of the cause. The argument that no Federal question is presented because the court below awarded to the contract creditors all the rights to which they were entitled, involves the assumption that jurisdiction to review the decision of a State court, disposing of a Federal question, depends upon the conception of the State court or some of the parties to the record as to the correctness of the decision rendered. This in effect denies the power to review a decision disposing of a Federal question in every case where the State court assumes that such question has been by it correctly disposed of. But this necessarily imports that in no case whatever where a State

court has decided a Federal question, can review in this court be had, since in every case it must be assumed that a State court of last resort has decided, according to its understanding, the issues presented to it for determination.

On the merits the errors assigned substantially raise all the controversies which were below decided. They hence embrace some subjects not essential to be considered in order to dispose of the Federal question.

The power of the constituent body to direct the Board of Liquidation to sell the bonds and the right to diminish the fund applicable to the drainage of the city of New Orleans, when viewed apart from the contract rights, involve purely local and non-Federal contentions. When the jurisdiction of this court is invoked because of the asserted impairment of contract rights arising from the effect given to subsequent legislation, it is our duty to exercise an independent judgment as to the nature and scope of the contract. Nevertheless, when the contract, which it is alleged, has been impaired, arises from a State statute, as said in *Burgess* v. *Seligman*, (107 U. S. 34,) "for the sake of harmony and to avoid confusion, the Federal courts will lean towards an agreement of views with the State courts, if the question seems to them balanced with doubt."

It is indeed disputable as a matter of independent judgment whether the rights of the contract creditors were as broad as the court below held them to be. (*Board of Liquidation* v. *McComb*, 92 U. S. 531.) Considering the many and in some respects ambiguous statutes of the State of Louisiana which are the sources of the contract rights, and permitting the opinion as to those rights entertained by the Supreme Court of the State of Louisiana to operate upon the doubt which must arise from a review of the statutes alone, we conclude as a matter of independent judgment that the contract rights were correctly defined by the Supreme Court of the State of Louisiana. The question then is, taking the contract rights to be as thus declared, were they substantially impaired by the conclusions reached by the Supreme Court of the State? If the answer to this question is to be deduced from the opinion of that court, a negative response is plainly required, since, in the most explicit terms, the opinion holds that the rights to arise in favor of the purchasers of the bonds which the new constitution directed to be sold, were subordinate in each and every respect, to all the prior contract rights. In the nature of things it cannot be said that subsequent rights which are so limited as to prevent them in any degree from interfering with prior ones, can as a matter of legal conclusion be held to impair such previous contract rights. But it is contended, and this is the controversy most strenuously pressed in the argument at bar, although by the opinion of the Supreme Court of the State of Louisiana the contract rights were protected, the decree of that court in effect brought about the destruction of the identical rights which

the opinion held could not be lawfully impaired. This proceeds on the assumption that as the decree of the trial court which was affirmed directed the Board of Liquidation to sell bonds under the refunding act and constitutional amendment of 1892, it therefore imposed the duty of offering bonds for sale exactly in the form required by the prior legislation without affixing any distinguishing statement to them, thereby causing the negotiable bonds, when sold, to be exactly on the same footing of legal right with those previously used for the purpose of retiring or refunding the debt. Under the law of Louisiana, it is asserted, the judgment, and not the reasoning used in the opinion of the court, is conclusive, and therefore the result above indicated must necessarily flow from the judgment which is now under review.

We do not stop to examine the Louisiana authorities cited to sustain the abstract proposition relied upon, as we consider the premise from which the contention is deduced to be unsound. It is to be borne in mind that under the act of 1890 and the amendment of 1892 the city of New Orleans was to issue a series of ten millions of bonds, to be placed in the hands of the Board of Liquidation for the retiring and refunding operations, and these bonds, so delivered to the board for the purposes specified, were required to be countersigned and issued by that body before they became complete and perfect evidences of debt against the city. Now, whilst it is true the mandamus, which was awarded against the board, directed it to sell bonds placed in its hands under the act of 1890, the ground for the allowance of the writ was the duty imposed upon the board to do so by the new constitution. Indeed, the opinion of the Supreme Court negatives the assumption that there was any authority conferred on the board to issue the bonds for the school debt by the act of 1890 or the amendment of 1892. Conceding, *arguendo*, only that there be as contended an exceptional and narrow rule in Louisiana excluding an examination of the pleadings for the purpose of elucidating the scope of a judgment rendered in a given cause—though the opposite doctrine is upheld by this court, (*Hornbuckle* v. *Stafford*, 111 U. S. 393)—we do not think there is reason for the assertion that the effect of the judgment below is to preclude the Board of Liquidation, when countersigning the bonds in question for the purpose of sale, from affixing to them a statement that they are issued in virtue of the authority of the new constitution and as a result of the command of the Supreme Court of the State. This being done, beyond peradventure, the takers of such bonds would be affected with notice of the legal authority under which they were issued and of the nature of the rights conferred by that authority, and therefore the inconvenience or possible wrong suggested in argument could not in any event arise. It would be beyond reason to assume that a judgment which commanded the performance of a particular act, because of the

existence of a legal duty arising from a specified provision of a State constitution, should be construed as excluding the right and duty to refer in issuing the bonds in obedience to its command to the authority by which alone the power exercised could be brought into play. Not only does the reason of things require this conclusion, but so also does the respect which we entertain for the learned tribunal below preclude the possibility of our accepting the impossible and contradictory construction of the effect of the opinion and decree advanced in the argument which we are considering. Of course, if the judgment below was susceptible of the interpretation contended for, in view of the nature of the contract rights as recognized by the Supreme Court of the State and established by the opinion which we have just expressed, it would be our duty to reverse the judgment below rendered.

Our affirmance, however, will be without prejudice to the right of the Board of Liquidation and the Drainage Commission to hereafter assert the impairment of the contract rights which would arise from construing the judgment contrary to its natural and necessary import so as to deprive the Board of Liquidation of the power in countersigning the bonds to state thereon the authority in virtue of which they are issued.

Affirmed.

Mr. Justice PECKHAM took no part in the decision of this cause.

True copy.

Test:

Clerk Supreme Court, U. S.